

2 **SHB 2659** - S COMM AMD
3 By Committee on Transportation

4 NOT ADOPTED 3/11/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds and declares that:

8 (1) The health, safety, and welfare of the people of the state of
9 Washington are dependent on the state's ability to properly collect the
10 taxes enacted by the legislature;

11 (2) The current system for collecting special fuel taxes and motor
12 vehicle fuel tax has allowed many parties to fraudulently evade paying
13 the special fuel taxes and motor vehicle fuel tax due the state; and

14 (3) By changing the point of collection of the special fuel taxes
15 and motor vehicle fuel tax from distributors to suppliers, the
16 department of licensing will have fewer parties to collect tax from and
17 enforcement will be enhanced, thus leading to greater revenues for the
18 state.

19 **Sec. 2.** RCW 35A.82.010 and 1995 c 274 s 4 are each amended to read
20 as follows:

21 A code city shall collect, receive and share in the distribution of
22 state collected and distributed excise taxes to the same extent and
23 manner as general laws relating thereto apply to any class of city or
24 town including, but not limited to, funds distributed to cities under
25 RCW 82.36.020 relating to motor vehicle fuel tax, RCW 82.38.290
26 relating to use fuel tax, and RCW 82.36.275 and 82.38.080(~~((+9))~~) (3).

27 **Sec. 3.** RCW 82.04.4285 and 1980 c 37 s 6 are each amended to read
28 as follows:

29 In computing tax there may be deducted from the measure of tax so
30 much of the sale price of motor vehicle fuel as constitutes the amount
31 of tax imposed by the state under chapters 82.36 and 82.38 RCW or the
32 United States government, under 26 U.S.C., Subtitle D, chapters 31 and
33 32, upon the sale thereof.

1 **Sec. 4.** RCW 82.08.0255 and 1983 1st ex.s. c 35 s 2 and 1983 c 108
2 s 1 are each reenacted and amended to read as follows:

3 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

4 (a) Motor vehicle fuel used in aircraft by the manufacturer thereof
5 for research, development, and testing purposes; and

6 (b) Motor vehicle and special fuel if:

7 (i) The fuel is purchased for the purpose of public transportation
8 and the purchaser is entitled to a refund or an exemption under RCW
9 82.36.275 or 82.38.080(~~(+9)~~) (3); or

10 (ii) The fuel is purchased by a private, nonprofit transportation
11 provider certified under chapter 81.66 RCW and the purchaser is
12 entitled to a refund or an exemption under RCW 82.36.285 or
13 82.38.080(~~(+8)~~) (1)(h); or

14 (iii) The fuel is taxable under chapter 82.36 or 82.38 RCW.

15 (2) Any person who has paid the tax imposed by RCW 82.08.020 on the
16 sale of special fuel delivered in this state shall be entitled to a
17 credit or refund of such tax with respect to fuel subsequently
18 established to have been actually transported and used outside this
19 state by persons engaged in interstate commerce. The tax shall be
20 claimed as a credit or refunded through the tax reports required under
21 RCW 82.38.150.

22 **Sec. 5.** RCW 82.12.0256 and 1983 1st ex.s. c 35 s 3 and 1983 c 108
23 s 2 are each reenacted and amended to read as follows:

24 The provisions of this chapter shall not apply in respect to the
25 use of:

26 (1) Motor vehicle fuel used in aircraft by the manufacturer thereof
27 for research, development, and testing purposes; and

28 (2) Special fuel purchased in this state upon which a refund is
29 obtained as provided in RCW 82.38.180(2); and

30 (3) Motor vehicle and special fuel if:

31 (a) The fuel is used for the purpose of public transportation and
32 the purchaser is entitled to a refund or an exemption under RCW
33 82.36.275 or 82.38.080(~~(+9)~~) (3); or

34 (b) The fuel is purchased by a private, nonprofit transportation
35 provider certified under chapter 81.66 RCW and the purchaser is
36 entitled to a refund or an exemption under RCW 82.36.285 or
37 82.38.080(~~(+8)~~) (1)(h); or

1 (c) The fuel is taxable under chapter 82.36 or 82.38 RCW:
2 PROVIDED, That the use of motor vehicle and special fuel upon which a
3 refund of the applicable fuel tax is obtained shall not be exempt under
4 this subsection (3)(c), and the director of licensing shall deduct from
5 the amount of such tax to be refunded the amount of tax due under this
6 chapter and remit the same each month to the department of revenue.

7 **Sec. 6.** RCW 82.36.010 and 1995 c 287 s 1 and 1995 c 274 s 20 are
8 each reenacted and amended to read as follows:

9 (~~For the purposes of this chapter:~~

10 (1) ~~"Motor vehicle" means every vehicle that is in itself a self-~~
11 ~~propelled unit, equipped with solid rubber, hollow cushion rubber, or~~
12 ~~pneumatic rubber tires and capable of being moved or operated upon a~~
13 ~~public highway, except motor vehicles used as motive power for or in~~
14 ~~conjunction with farm implements and machines or implements of~~
15 ~~husbandry;~~

16 (2) ~~"Motor vehicle fuel" means gasoline or any other inflammable~~
17 ~~gas or liquid, by whatsoever name such gasoline, gas, or liquid may be~~
18 ~~known or sold, the chief use of which is as fuel for the propulsion of~~
19 ~~motor vehicles or motorboats;~~

20 (3) ~~"Distributor" means every person who refines, manufactures,~~
21 ~~produces, or compounds motor vehicle fuel and sells, distributes, or in~~
22 ~~any manner uses it in this state; also every person engaged in business~~
23 ~~as a bona fide wholesale merchant dealing in motor vehicle fuel who~~
24 ~~either acquires it within the state from any person refining it within~~
25 ~~or importing it into the state, on which the tax has not been paid, or~~
26 ~~imports it into this state and sells, distributes, or in any manner~~
27 ~~uses it in this state; also every person who acquires motor vehicle~~
28 ~~fuel, on which the tax has not been paid, and exports it by commercial~~
29 ~~motor vehicle to a location outside the state. For the purposes of~~
30 ~~liability for a county fuel tax, "distributor" has that meaning defined~~
31 ~~in the county ordinance imposing the tax. For the purposes of this~~
32 ~~subsection, "commercial motor vehicle" means any motor vehicle used,~~
33 ~~designed, or maintained for transportation of persons or property and:~~
34 ~~(a) Having two axles and a gross vehicle weight or registered gross~~
35 ~~vehicle weight exceeding twenty six thousand pounds; or (b) having~~
36 ~~three or more axles regardless of weight; or (c) is used in~~
37 ~~combination, when the weight of such combination exceeds twenty six~~

1 thousand pounds gross vehicle weight. "Commercial motor vehicle" does
2 not include recreational vehicles;

3 (4) "Service station" means a place operated for the purpose of
4 delivering motor vehicle fuel into the fuel tanks of motor vehicles;

5 (5) "Department" means the department of licensing;

6 (6) "Director" means the director of licensing;

7 (7) "Dealer" means any person engaged in the retail sale of liquid
8 motor vehicle fuels;

9 (8) "Person" means every natural person, firm, partnership,
10 association, or private or public corporation;

11 (9) "Highway" means every way or place open to the use of the
12 public, as a matter of right, for purposes of vehicular travel;

13 (10) "Broker" means every person, other than a distributor, engaged
14 in business as a broker, jobber, or wholesale merchant dealing in motor
15 vehicle fuel or other petroleum products used or usable in propelling
16 motor vehicles, or in other petroleum products which may be used in
17 blending, compounding, or manufacturing of motor vehicle fuel;

18 (11) "Producer" means every person, other than a distributor,
19 engaged in the business of producing motor vehicle fuel or other
20 petroleum products used in, or which may be used in, the blending,
21 compounding, or manufacturing of motor vehicle fuel;

22 (12) "Distribution" means all withdrawals of motor vehicle fuel for
23 delivery to others, to retail service stations, or to unlicensed bulk
24 storage plants;

25 (13) "Bulk storage plant" means, pursuant to the licensing
26 provisions of RCW 82.36.070, any plant, under the control of the
27 distributor, used for the storage of motor vehicle fuel to which no
28 retail outlets are directly connected by pipe lines;

29 (14) "Marine fuel dealer" means any person engaged in the retail
30 sale of liquid motor vehicle fuel whose place of business and or sale
31 outlet is located upon a navigable waterway;

32 (15) "Alcohol" means alcohol that is produced from renewable
33 resources;

34 (16) "Electronic funds transfer" means any transfer of funds, other
35 than a transaction originated by check, draft, or similar paper
36 instrument, which is initiated through an electronic terminal,
37 telephonic instrument, or computer or magnetic tape so as to order,
38 instruct, or authorize a financial institution to debit or credit an
39 account;

1 ~~(17) "Evasion" or "evade" means to diminish or avoid the~~
2 ~~computation, assessment, or payment of authorized taxes or fees~~
3 ~~through:~~

4 ~~(a) A knowing: False statement, misrepresentation of fact, or~~
5 ~~other act of deception; or~~

6 ~~(b) An intentional: Omission, failure to file a return or report,~~
7 ~~or other act of deception.))~~ The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Blended fuel" means a mixture of motor vehicle fuel and
10 another liquid, other than a de minimus amount of the liquid, that can
11 be used as a fuel to propel a motor vehicle.

12 (2) "Bond" means a bond duly executed with a corporate surety
13 qualified under chapter 48.28 RCW, which bond is payable to the state
14 of Washington conditioned upon faithful performance of all requirements
15 of this chapter, including the payment of all taxes, penalties, and
16 other obligations arising out of this chapter.

17 (3) "Bulk transfer" means a transfer of motor vehicle fuel by
18 pipeline or vessel.

19 (4) "Bulk transfer-terminal system" means the motor vehicle fuel
20 distribution system consisting of refineries, pipelines, vessels, and
21 terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or
22 terminal is in the bulk transfer-terminal system. Motor vehicle fuel
23 in the fuel tank of an engine, motor vehicle, or in a railcar, trailer,
24 truck, or other equipment suitable for ground transportation is not in
25 the bulk transfer-terminal system.

26 (5) "Dealer" means a person engaged in the retail sale of motor
27 vehicle fuel.

28 (6) "Department" means the department of licensing.

29 (7) "Director" means the director of licensing.

30 ~~(8) "Evasion" or "evade" means to diminish or avoid the~~
31 ~~computation, assessment, or payment of authorized taxes or fees~~
32 ~~through:~~

33 ~~(a) A knowing: False statement; misrepresentation of fact; or~~
34 ~~other act of deception; or~~

35 ~~(b) An intentional: Omission; failure to file a return or report;~~
36 ~~or other act of deception.~~

37 (9) "Export" means to obtain motor vehicle fuel in this state for
38 sales or distribution outside the state.

1 (10) "Highway" means every way or place open to the use of the
2 public, as a matter of right, for the purpose of vehicular travel.

3 (11) "Import" means to bring motor vehicle fuel into this state by
4 a means of conveyance other than the fuel supply tank of a motor
5 vehicle.

6 (12) "Licensee" means a person holding a license issued under this
7 chapter.

8 (13) "Marine fuel dealer" means a person engaged in the retail sale
9 of motor vehicle fuel whose place of business and/or sale outlet is
10 located upon a navigable waterway.

11 (14) "Motor vehicle fuel blender" means a person who produces
12 blended motor fuel outside the bulk transfer-terminal system.

13 (15) "Motor vehicle fuel distributor" means a person who acquires
14 motor vehicle fuel from a supplier, distributor, or licensee for
15 subsequent sale and distribution.

16 (16) "Motor vehicle fuel exporter" means a person who purchases
17 motor vehicle fuel in this state and directly exports the fuel by a
18 means other than the bulk transfer-terminal system to a destination
19 outside of the state. If the exporter of record is acting as an agent,
20 the person for whom the agent is acting is the exporter. If there is
21 no exporter of record, the owner of the motor fuel at the time of
22 exportation is the exporter.

23 (17) "Motor vehicle fuel importer" means a person who imports motor
24 vehicle fuel into the state by a means other than the bulk transfer-
25 terminal system. If the importer of record is acting as an agent, the
26 person for whom the agent is acting is the importer. If there is no
27 importer of record, the owner of the motor vehicle fuel at the time of
28 importation is the importer.

29 (18) "Motor vehicle fuel supplier" means a person who owns and
30 stores motor vehicle fuel in a terminal facility or who refines and
31 stores motor vehicle fuel at a refinery.

32 (19) "Motor vehicle" means a self-propelled vehicle designed for
33 operation upon land utilizing motor vehicle fuel as the means of
34 propulsion.

35 (20) "Motor vehicle fuel" means gasoline and any other inflammable
36 gas or liquid, by whatsoever name the gasoline, gas, or liquid may be
37 known or sold, the chief use of which is as fuel for the propulsion of
38 motor vehicles or motorboats.

1 (21) "Person" means a natural person, fiduciary, association, or
2 corporation. The term "person" as applied to an association means and
3 includes the partners or members thereof, and as applied to
4 corporations, the officers thereof.

5 (22) "Position holder" means a person who holds the inventory
6 position in motor vehicle fuel, as reflected by the records of the
7 terminal operator. A person holds the inventory position in motor
8 vehicle fuel if the person has a contractual agreement with the
9 terminal for the use of storage facilities and terminating services at
10 a terminal with respect to motor vehicle fuel. "Position holder"
11 includes a terminal operator that owns motor vehicle fuel in their
12 terminal.

13 (23) "Rack" means a mechanism for delivering motor vehicle fuel
14 from a refinery or terminal into a truck, trailer, railcar, or other
15 means of nonbulk transfer.

16 (24) "Refiner" means a person who owns, operates, or otherwise
17 controls a refinery.

18 (25) "Removal" means a physical transfer of motor vehicle fuel
19 other than by evaporation, loss, or destruction.

20 (26) "Terminal" means a motor vehicle fuel storage and distribution
21 facility that has been assigned a terminal control number by the
22 internal revenue service, is supplied by pipeline or vessel, and from
23 which reportable motor vehicle fuel is removed at a rack.

24 (27) "Terminal operator" means a person who owns, operates, or
25 otherwise controls a terminal.

26 (28) "Two-party exchange" or "buy-sell agreement" means a
27 transaction in which taxable motor vehicle fuel is transferred from one
28 licensed supplier to another licensed supplier under an exchange or
29 buy-sell agreement whereby the supplier that is the position holder
30 agrees to deliver taxable motor vehicle fuel to the other supplier or
31 the other supplier's customer at the rack of the terminal at which the
32 delivering supplier is the position holder.

33 **Sec. 7.** RCW 82.36.020 and 1983 1st ex.s. c 49 s 26 are each
34 amended to read as follows:

35 ~~((Every distributor shall pay, in addition to any other taxes~~
36 ~~provided by law, an excise tax to the director at a rate computed in~~
37 ~~the manner provided in RCW 82.36.025 for each gallon of motor vehicle~~
38 ~~fuel sold, distributed, or used by him in the state as well as on each~~

1 gallon upon which he has assumed liability for payment of the tax under
2 the provisions of RCW 82.36.100: PROVIDED, That under such regulations
3 as the director may prescribe sales or distribution of motor vehicle
4 fuel may be made by one licensed distributor to another licensed
5 distributor free of the tax. In the computation of the tax, one-
6 quarter of one percent of the net gallonage otherwise taxable shall be
7 deducted by the distributor before computing the tax due, on account of
8 the losses sustained through handling. The tax imposed hereunder shall
9 be in addition to any other tax required by law, and shall not be
10 imposed under circumstances in which the tax is prohibited by the
11 Constitution or laws of the United States. The tax herein imposed
12 shall be collected and paid to the state but once in respect to any
13 motor vehicle fuel. An invoice shall be rendered by a distributor to
14 a purchaser for each distribution of motor vehicle fuel.))

15 (1) There is hereby levied and imposed upon motor vehicle fuel
16 users a tax at the rate computed in the manner provided in RCW
17 82.36.025 on each gallon of motor vehicle fuel.

18 (2) The tax imposed by subsection (1) of this section is imposed
19 when any of the following occurs:

20 (a) Motor vehicle fuel is removed in this state from a terminal if
21 the motor vehicle fuel is removed at the rack unless the removal is to
22 a licensed exporter for direct delivery to a destination outside of the
23 state;

24 (b) Motor vehicle fuel is removed in this state from a refinery if
25 either of the following applies:

26 (i) The removal is by bulk transfer and the refiner or the owner of
27 the motor vehicle fuel immediately before the removal is not a
28 licensee; or

29 (ii) The removal is at the refinery rack unless the removal is to
30 a licensed exporter for direct delivery to a destination outside of the
31 state;

32 (c) Motor vehicle fuel enters into this state for sale,
33 consumption, use, or storage if either of the following applies:

34 (i) The entry is by bulk transfer and the importer is not a
35 licensee; or

36 (ii) The entry is not by bulk transfer;

37 (d) Motor vehicle fuel is removed in this state to an unlicensed
38 entity unless there was a prior taxable removal, entry, or sale of the
39 motor vehicle fuel;

1 (e) Blended motor vehicle fuel is removed or sold in this state by
2 the blender of the fuel. The number of gallons of blended motor
3 vehicle fuel subject to the tax is the difference between the total
4 number of gallons of blended motor vehicle fuel removed or sold and the
5 number of gallons of previously taxed motor vehicle fuel used to
6 produce the blended motor vehicle fuel.

7 (3) The proceeds of the motor vehicle fuel excise tax collected
8 (~~on the net gallonage after the deduction provided for herein and~~)
9 after the deductions for payments and expenditures as provided in RCW
10 46.68.090(~~(7)~~) shall be distributed as provided in RCW 46.68.100.

11 NEW SECTION. Sec. 8. (1) A position holder shall remit tax to the
12 department on motor vehicle fuel removed from a terminal as provided in
13 RCW 82.36.020(2)(a). On a two-party exchange, or buy-sell agreement
14 between two suppliers, the receiving exchange partner or buyer, becomes
15 the position holder, who shall remit the tax.

16 (2) A refiner shall remit tax to the department on motor vehicle
17 fuel removed from a refinery as provided in RCW 82.36.020(2)(b).

18 (3) An importer shall remit tax to the department on motor vehicle
19 fuel imported into this state as provided in RCW 82.36.020(2)(c).

20 (4) A blender shall remit tax to the department on the removal or
21 sale of blended motor vehicle fuel as provided in RCW 82.36.020(2)(e).

22 NEW SECTION. Sec. 9. A terminal operator is jointly and severally
23 liable for remitting the tax imposed under RCW 82.36.020(1) if, at the
24 time of removal:

25 (1) The position holder with respect to the motor vehicle fuel is
26 a person other than the terminal operator and is not a licensee;

27 (2) The terminal operator is not a licensee;

28 (3) The position holder has an expired internal revenue service
29 notification certificate issued under 26 C.F.R. Part 48; or

30 (4) The terminal operator had reason to believe that information on
31 the notification certificate was false.

32 NEW SECTION. Sec. 10. Upon the taxable removal of motor vehicle
33 fuel, the licensee who acquired or removed the motor vehicle fuel,
34 other than a motor vehicle fuel exporter, shall be entitled to a
35 deduction from the tax liability on the gallonage of taxable motor
36 vehicle fuel removed in order to account for handling losses, as

1 follows: For a motor vehicle fuel supplier acting as a distributor,
2 one-quarter of one percent; and for all other licensees, thirty one-
3 hundredths of one percent. For those licensees required to file tax
4 reports, the handling loss deduction shall be reported on tax reports
5 filed with the department. For motor vehicle fuel distributors, the
6 handling loss deduction shall be shown on the invoice provided to the
7 motor vehicle fuel distributor by the seller.

8 NEW SECTION. **Sec. 11.** For the purpose of determining the amount
9 of liability for the tax imposed under this chapter, and to
10 periodically update license information, each licensee, other than a
11 motor vehicle fuel distributor, shall file monthly tax reports with the
12 department, on a form prescribed by the department.

13 A report shall be filed with the department even though no motor
14 vehicle fuel tax is due for the reporting period. Each tax report
15 shall contain a declaration by the person making the same, to the
16 effect that the statements contained therein are true and made under
17 penalties of perjury, which declaration has the same force and effect
18 as a verification of the report and is in lieu of the verification.
19 The report shall show information as the department may require for the
20 proper administration and enforcement of this chapter. Tax reports
21 shall be filed on or before the twenty-fifth day of the next succeeding
22 calendar month following the period to which the reports relate. If
23 the final filing date falls on a Saturday, Sunday, or legal holiday the
24 next secular or business day shall be the final filing date.

25 The department, if it deems it necessary in order to ensure payment
26 of the tax imposed under this chapter, or to facilitate the
27 administration of this chapter, may require the filing of reports and
28 tax remittances at shorter intervals than one month.

29 NEW SECTION. **Sec. 12.** (1) The tax imposed by this chapter shall
30 be computed by multiplying the tax rate per gallon provided in this
31 chapter by the number of gallons of motor vehicle fuel subject to the
32 motor vehicle fuel tax.

33 (2) Except as provided in subsection (3) of this section, tax
34 reports shall be accompanied by a remittance payable to the state
35 treasurer covering the tax amount determined to be due for the
36 reporting period.

1 (3) If the tax is paid by electronic funds transfer, the tax shall
2 be paid on or before the tenth calendar day of the month that is the
3 second month immediately following the reporting period. When the
4 reporting period is May, the tax shall be paid on the last business day
5 of June.

6 (4) The tax shall be paid by electronic funds transfer whenever the
7 amount due is fifty thousand dollars or more.

8 (5) A motor vehicle fuel distributor shall remit tax on motor
9 vehicle fuel purchased from a motor vehicle fuel supplier, and due to
10 the state for that reporting period, to the motor vehicle fuel
11 supplier.

12 (6) At the election of the distributor, the payment of the motor
13 vehicle fuel tax owed on motor vehicle fuel purchased from a supplier
14 shall be remitted to the supplier on terms agreed upon between the
15 distributor and supplier or no later than two business days before the
16 last business day of the following month. This election shall be
17 subject to a condition that the distributor's remittances of all
18 amounts of motor vehicle fuel tax due to the supplier shall be paid by
19 electronic funds transfer. The distributor's election may be
20 terminated by the supplier if the distributor does not make timely
21 payments to the supplier as required by this section. This section
22 shall not apply if the distributor is required by the supplier to pay
23 cash or cash equivalent for motor vehicle fuel purchases.

24 **Sec. 13.** RCW 82.36.032 and 1987 c 174 s 7 are each amended to read
25 as follows:

26 If any ((distributor)) licensee files a fraudulent ((monthly
27 gallonage return)) tax report with intent to evade the tax imposed by
28 this chapter, there shall be added to the amount of deficiency
29 determined by the department a penalty equal to twenty-five percent of
30 the deficiency, in addition to all other penalties prescribed by law.

31 NEW SECTION. **Sec. 14.** A motor vehicle fuel supplier shall, no
32 later than the twentieth calendar day or next state business day after
33 the motor vehicle fuel tax is due from a motor vehicle fuel distributor
34 under this chapter, notify the department of the failure of a motor
35 vehicle fuel distributor to pay the full amount of the tax owed.

36 Upon notification and submission of satisfactory evidence by a
37 motor vehicle fuel supplier that a motor vehicle fuel distributor has

1 failed to pay the full amount of the tax owed, the department may
2 suspend the license of the motor vehicle fuel distributor.

3 Upon the suspension, the department shall immediately notify all
4 motor vehicle fuel suppliers that the authority of the motor vehicle
5 fuel distributor to purchase tax-deferred motor vehicle fuel has been
6 suspended and all subsequent purchases of motor vehicle fuel by the
7 motor vehicle fuel distributor must be tax-paid at the time of removal.

8 If, after notification by the department, a motor vehicle fuel
9 supplier continues to sell tax-deferred motor vehicle fuel to a motor
10 vehicle fuel distributor whose license is suspended, the motor vehicle
11 fuel supplier's license is subject to revocation or suspension under
12 RCW 82.36.190. Furthermore, if notified of a license suspension, a
13 motor vehicle fuel supplier is liable for any unpaid motor vehicle fuel
14 tax owed on motor vehicle fuel sold to a suspended motor vehicle fuel
15 distributor.

16 NEW SECTION. **Sec. 15.** A motor vehicle fuel supplier is entitled
17 to a credit of the tax paid over to the department on those sales of
18 motor vehicle fuel for which the supplier has received no consideration
19 from or on behalf of the purchaser. The amount of the tax credit shall
20 not exceed the amount of tax imposed by this chapter on such sales.
21 Such credit may be taken on a tax return subsequent to the tax return
22 on which the tax was paid over to the department. If a credit has been
23 granted under this section, any amounts collected for application
24 against accounts on which such a credit is based shall be reported on
25 a subsequent tax return filed after such collection, and the amount of
26 credit received by the supplier based upon the collected amount shall
27 be returned to the department. In the event the credit has not been
28 paid, the amount of the credit requested by the supplier shall be
29 adjusted by the department to reflect the decrease in the amount on
30 which the claim is based.

31 **Sec. 16.** RCW 82.36.045 and 1996 c 104 s 2 are each amended to read
32 as follows:

33 (1) If the department determines that the tax reported by a ((motor
34 vehicle fuel distributor)) licensee is deficient, the department shall
35 assess the deficiency on the basis of information available to it, and
36 shall add a penalty of two percent of the amount of the deficiency.

1 (2) If a (~~distributor, whether licensed or not licensed~~)
2 licensee, or person acting as such, fails, neglects, or refuses to file
3 a motor vehicle fuel tax report the department shall, on the basis of
4 information available to it, determine the tax liability of the
5 (~~distributor~~) licensee or person for the period during which no
6 report was filed. The department shall add the penalty provided in
7 subsection (1) of this section to the tax. An assessment made by the
8 department under this subsection or subsection (1) of this section is
9 presumed to be correct. In any case, where the validity of the
10 assessment is questioned, the burden is on the person who challenges
11 the assessment to establish by a fair preponderance of evidence that it
12 is erroneous or excessive, as the case may be.

13 (3) If a (~~distributor~~) licensee or person acting as such files a
14 false or fraudulent report with intent to evade the tax imposed by this
15 chapter, the department shall add to the amount of deficiency a penalty
16 equal to twenty-five percent of the deficiency, in addition to the
17 penalty provided in subsections (1) and (2) of this section and all
18 other penalties prescribed by law.

19 (4) Motor vehicle fuel tax, penalties, and interest payable under
20 this chapter bears interest at the rate of one percent per month, or
21 fraction thereof, from the first day of the calendar month after the
22 amount or any portion of it should have been paid until the date of
23 payment. If a (~~distributor~~) licensee or person acting as such
24 establishes by a fair preponderance of evidence that the failure to pay
25 the amount of tax due was attributable to reasonable cause and was not
26 intentional or willful, the department may waive the penalty. The
27 department may waive the interest when it determines the cost of
28 processing or collection of the interest exceeds the amount of interest
29 due.

30 (5) Except in the case of a fraudulent report, neglect or refusal
31 to make a report, or failure to pay or to pay the proper amount, the
32 department shall assess the deficiency under subsection (1) or (2) of
33 this section within five years from the last day of the succeeding
34 calendar month after the reporting period for which the amount is
35 proposed to be determined or within five years after the return is
36 filed, whichever period expires later.

37 (6) Except in the case of violations of filing a false or
38 fraudulent report, if the department deems mitigation of penalties and
39 interest to be reasonable and in the best interest of carrying out the

1 purpose of this chapter, it may mitigate such assessments upon whatever
2 terms the department deems proper, giving consideration to the degree
3 and extent of the lack of records and reporting errors. The department
4 may ascertain the facts regarding recordkeeping and payment penalties
5 in lieu of more elaborate proceedings under this chapter.

6 (7) A ~~((distributor))~~ licensee or person acting as such against
7 whom an assessment is made under subsection (1) or (2) of this section
8 may petition for a reassessment within thirty days after service upon
9 the ~~((distributor))~~ licensee of notice of the assessment. If the
10 petition is not filed within the thirty-day period, the amount of the
11 assessment becomes final at the expiration of that period.

12 If a petition for reassessment is filed within the thirty-day
13 period, the department shall reconsider the assessment and, if the
14 ~~((distributor))~~ petitioner has so requested in its petition, shall
15 grant the ~~((distributor))~~ petitioner an oral hearing and give the
16 ~~((distributor))~~ petitioner twenty days' notice of the time and place of
17 the hearing. The department may continue the hearing from time to
18 time. The decision of the department upon a petition for reassessment
19 becomes final thirty days after service of notice upon the
20 ~~((distributor))~~ petitioner.

21 An assessment made by the department becomes due and payable when
22 it becomes final. If it is not paid to the department when due and
23 payable, the department shall add a penalty of ten percent of the
24 amount of the tax.

25 (8) In a suit brought to enforce the rights of the state under this
26 chapter, the assessment showing the amount of taxes, penalties,
27 interest, and cost unpaid to the state is prima facie evidence of the
28 facts as shown.

29 (9) A notice of assessment required by this section must be served
30 personally or by certified or registered mail. If it is served by
31 mail, service shall be made by deposit of the notice in the United
32 States mail, postage prepaid, addressed to the ~~((distributor))~~
33 respondent at the most current address furnished to the department.

34 (10) The tax ~~((required))~~ imposed by this chapter, if required to
35 be collected by the seller, is held in trust by the ~~((seller))~~ licensee
36 until paid to the department, and a ~~((seller))~~ licensee who
37 appropriates or converts the tax collected to his or her own use or to
38 any use other than the payment of the tax to the extent that the money
39 required to be collected is not available for payment on the due date

1 as prescribed in this chapter is guilty of a felony, or gross
2 misdemeanor in accordance with the theft and anticipatory provisions of
3 Title 9A RCW. A person, partnership, corporation, or corporate officer
4 who fails to collect the tax imposed by this section, or who has
5 collected the tax and fails to pay it to the department in the manner
6 prescribed by this chapter, is personally liable to the state for the
7 amount of the tax.

8 **Sec. 17.** RCW 82.36.047 and 1991 c 339 s 4 are each amended to read
9 as follows:

10 When an assessment becomes final in accordance with this chapter,
11 the department may file with the clerk of any county within the state
12 a warrant in the amount of the assessment of taxes, penalties,
13 interest, and a filing fee of five dollars. The clerk of the county in
14 which the warrant is filed shall immediately designate a superior court
15 cause number for the warrant, and the clerk shall cause to be entered
16 in the judgment docket under the superior court cause number assigned
17 to the warrant the name of the (~~distributor~~) licensee or person
18 mentioned in the warrant, the amount of the tax, penalties, interest,
19 and filing fee, and the date when the warrant was filed. The aggregate
20 amount of the warrant as docketed becomes a lien upon the title to and
21 interest in all real and personal property of the named person against
22 whom the warrant is issued, the same as a judgment in a civil case duly
23 docketed in the office of the clerk. The warrant so docketed is
24 sufficient to support the issuance of writs of execution and writs of
25 garnishment in favor of the state in the manner provided by law in the
26 case of a civil judgment, wholly or partially unsatisfied. The clerk
27 of the court is entitled to a filing fee of five dollars.

28 **Sec. 18.** RCW 82.36.060 and 1996 c 104 s 3 are each amended to read
29 as follows:

30 (~~Every person, before becoming a distributor or continuing in~~
31 ~~business as a distributor, shall make~~) (1) An application (~~to the~~
32 ~~department~~) for a license (~~authorizing the applicant to engage in~~
33 ~~business as a distributor. Applications for such licenses~~) issued
34 under this chapter shall be made to the department on forms to be
35 furnished by the department and shall contain such information as the
36 department deems necessary.

1 (2) Every application for a (~~distributor's~~) license must contain
2 the following information to the extent it applies to the applicant:
3 (~~(1)~~) (a) Proof as the department may require concerning the
4 applicant's identity, including but not limited to his or her
5 fingerprints or those of the officers of a corporation making the
6 application;
7 (~~(2)~~) (b) The applicant's form and place of organization
8 including proof that the individual, partnership, or corporation is
9 licensed to do business in this state;
10 (~~(3)~~) (c) The qualification and business history of the applicant
11 and any partner, officer, or director;
12 (~~(4)~~) (d) The applicant's financial condition or history
13 including a bank reference and whether the applicant or any partner,
14 officer, or director has ever been adjudged bankrupt or has an
15 unsatisfied judgment in a federal or state court;
16 (~~(5)~~) (e) Whether the applicant has been adjudged guilty of a
17 crime that directly relates to the business for which the license is
18 sought and the time elapsed since the conviction is less than ten
19 years, or has suffered a judgment within the preceding five years in a
20 civil action involving fraud, misrepresentation, or conversion and in
21 the case of a corporation or partnership, all directors, officers, or
22 partners.

23 (3) An applicant for a license as a motor vehicle fuel importer
24 must list on the application each state, province, or country from
25 which the applicant intends to import motor vehicle fuel and, if
26 required by the state, province, or country listed, must be licensed or
27 registered for motor vehicle fuel tax purposes in that state, province,
28 or country.

29 (4) An applicant for a license as a motor vehicle fuel exporter
30 must list on the application each state, province, or country to which
31 the exporter intends to export motor vehicle fuel received in this
32 state by means of a transfer outside of the bulk transfer-terminal
33 system and, if required by the state, province, or country listed, must
34 be licensed or registered for motor vehicle fuel tax purposes in that
35 state, province, or country.

36 (5) An applicant for a license as a motor vehicle fuel supplier
37 must have a federal certificate of registry that is issued under the
38 internal revenue code and authorizes the applicant to enter into

1 federal tax-free transactions on motor vehicle fuel in the terminal
2 transfer system.

3 (6) After receipt of an application for a license, the director may
4 conduct an investigation to determine whether the facts set forth are
5 true. The director ((may)) shall require a fingerprint record check of
6 the applicant through the Washington state patrol criminal
7 identification system and the federal bureau of investigation before
8 issuance of a license. The results of the background investigation
9 including criminal history information may be released to authorized
10 department personnel as the director deems necessary. The department
11 shall charge a license holder or license applicant a fee of fifty
12 dollars for each background investigation conducted.

13 An applicant who makes a false statement of a material fact on the
14 application may be prosecuted for false swearing as defined by RCW
15 9A.72.040.

16 Before granting any license ((authorizing any person to engage in
17 ~~business as a distributor~~)) issued under this chapter, the department
18 shall require applicant to file with the department, in such form as
19 shall be prescribed by the department, a corporate surety bond duly
20 executed by the applicant as principal, payable to the state and
21 conditioned for faithful performance of all the requirements of this
22 chapter, including the payment of all taxes, penalties, and other
23 obligations arising out of this chapter. The total amount of the bond
24 or bonds((, ~~required of any distributor~~)) shall be fixed by the
25 department and may be increased or reduced by the department at any
26 time subject to the limitations herein provided. In fixing the total
27 amount of the bond or bonds ((~~required of any distributor~~)), the
28 department shall require a bond or bonds equivalent in total amount to
29 twice the estimated monthly excise tax determined in such manner as the
30 department may deem proper. If at any time the estimated excise tax to
31 become due during the succeeding month amounts to more than fifty
32 percent of the established bond, the department shall require
33 additional bonds or securities to maintain the marginal ratio herein
34 specified or shall demand excise tax payments to be made weekly or
35 semimonthly to meet the requirements hereof.

36 The total amount of the bond or bonds required of any
37 ((~~distributor~~)) licensee shall never be less than five thousand dollars
38 nor more than ((~~fifty~~)) one hundred thousand dollars.

1 No recoveries on any bond or the execution of any new bond shall
2 invalidate any bond and no revocation of any license shall effect the
3 validity of any bond but the total recoveries under any one bond shall
4 not exceed the amount of the bond.

5 In lieu of any such bond or bonds in total amount as herein fixed,
6 a ~~((distributor))~~ licensee may deposit with the state treasurer, under
7 such terms and conditions as the department may prescribe, a like
8 amount of lawful money of the United States or bonds or other
9 obligations of the United States, the state, or any county of the
10 state, of an actual market value not less than the amount so fixed by
11 the department.

12 Any surety on a bond furnished by a ~~((distributor))~~ licensee as
13 provided herein shall be released and discharged from any and all
14 liability to the state accruing on such bond after the expiration of
15 thirty days from the date upon which such surety has lodged with the
16 department a written request to be released and discharged, but this
17 provision shall not operate to relieve, release, or discharge the
18 surety from any liability already accrued or which shall accrue before
19 the expiration of the thirty day period. The department shall
20 promptly, upon receiving any such request, notify the ~~((distributor))~~
21 licensee who furnished the bond; and unless the ~~((distributor))~~
22 licensee, on or before the expiration of the thirty day period, files
23 a new bond, or makes a deposit in accordance with the requirements of
24 this section, the department shall forthwith cancel the
25 ~~((distributor's))~~ license. Whenever a new bond is furnished by a
26 ~~((distributor))~~ licensee, the department shall cancel ~~((his or her))~~
27 the old bond as soon as the department and the attorney general are
28 satisfied that all liability under the old bond has been fully
29 discharged.

30 The department may require a ~~((distributor))~~ licensee to give a new
31 or additional surety bond or to deposit additional securities of the
32 character specified in this section if, in its opinion, the security of
33 the surety bond theretofore filed by such ~~((distributor))~~ licensee, or
34 the market value of the properties deposited as security by the
35 ~~((distributor))~~ licensee, shall become impaired or inadequate; and upon
36 the failure of the ~~((distributor))~~ licensee to give such new or
37 additional surety bond or to deposit additional securities within
38 thirty days after being requested so to do by the department, the
39 department shall forthwith cancel his or her license.

1 **Sec. 19.** RCW 82.36.070 and 1996 c 104 s 4 are each amended to read
2 as follows:

3 The application in proper form having been accepted for filing, the
4 filing fee paid, and the bond or other security having been accepted
5 and approved, the department shall issue to the applicant ((a)) the
6 appropriate license ((to transact business as a distributor in the
7 state)), and such license shall be valid until canceled or revoked.

8 The license so issued by the department shall not be assignable,
9 and shall be valid only for the ((distributor)) person in whose name
10 issued.

11 ((The department shall keep and file all applications and bonds
12 with an alphabetical index thereof, together with a record of all
13 licensed distributors.))

14 Each ((distributor)) licensee shall be assigned a license number
15 ((upon qualifying for a license hereunder)), and the department shall
16 issue to each ((such)) licensee a license certificate which shall be
17 displayed conspicuously ((by the distributor)) at his or her principal
18 place of business. The department may refuse to issue or may revoke a
19 motor vehicle fuel ((distributor)) license, to a person:

20 (1) Who formerly held a motor vehicle fuel ((distributor's))
21 license that, before the time of filing for application, has been
22 revoked or canceled for cause;

23 (2) Who is a subterfuge for the real party in interest whose
24 license has been revoked or canceled for cause;

25 (3) Who, as an individual licensee or officer, director, owner, or
26 managing employee of a nonindividual licensee, has had a motor vehicle
27 fuel ((distributor)) license revoked or canceled for cause;

28 (4) Who has an unsatisfied debt to the state assessed under either
29 chapter 82.36, ((82.37)) 82.38, 82.42, or 46.87 RCW;

30 (5) Who formerly held as an individual, officer, director, owner,
31 managing employee of a nonindividual licensee, or subterfuge for a real
32 party in interest, a license issued by the federal government or a
33 state that allowed a person to buy or sell untaxed motor vehicle or
34 special fuel, which license, before the time of filing for application,
35 has been revoked for cause;

36 (6) Who pled guilty to or was convicted as an individual, corporate
37 officer, director, owner, or managing employee in this or any other
38 state or in any federal jurisdiction of a gross misdemeanor or felony
39 crime directly related to the business or has been subject to a civil

1 judgment involving fraud, misrepresentation, conversion, or dishonesty,
2 notwithstanding chapter 9.96A RCW;

3 (7) Who misrepresented or concealed a material fact in obtaining a
4 license or in reinstatement thereof;

5 (8) Who violated a statute or administrative rule regulating fuel
6 taxation or distribution;

7 (9) Who failed to cooperate with the department's investigations
8 by:

9 (a) Not furnishing papers or documents;

10 (b) Not furnishing in writing a full and complete explanation
11 regarding a matter under investigation by the department; or

12 (c) Not responding to subpoenas issued by the department, whether
13 or not the recipient of the subpoena is the subject of the proceeding;

14 (10) Who failed to comply with an order issued by the director; or

15 (11) Upon other sufficient cause being shown.

16 Before such a refusal or revocation, the department shall grant the
17 applicant a hearing and shall give the applicant at least twenty days'
18 written notice of the time and place of the hearing.

19 For the purpose of considering an application for a
20 (~~distributor's~~) license issued under this chapter, the department may
21 inspect, cause an inspection, investigate, or cause an investigation of
22 the records of this or any other state or of the federal government to
23 ascertain the veracity of the information on the application form and
24 the applicant's criminal and licensing history.

25 The department may, in the exercise of reasonable discretion,
26 suspend a motor vehicle (~~distributor~~) fuel license at any time before
27 and pending such a hearing for unpaid taxes or reasonable cause.

28 **Sec. 20.** RCW 82.36.080 and 1961 c 15 s 82.36.080 are each amended
29 to read as follows:

30 (1) It shall be unlawful for any person to (~~be a distributor~~
31 ~~without first securing a license from the director~~) engage in business
32 in this state as any of the following unless the person is the holder
33 of an uncanceled license issued by the department authorizing the
34 person to engage in that business:

35 (a) Motor vehicle fuel supplier;

36 (b) Motor vehicle fuel distributor;

37 (c) Motor vehicle fuel exporter;

38 (d) Motor vehicle fuel importer; or

1 (e) Motor vehicle fuel blender.

2 (2) A person engaged in more than one activity for which a license
3 is required must have a separate license classification for each
4 activity, but a motor vehicle fuel supplier is not required to obtain
5 a separate license classification for any other activity for which a
6 license is required.

7 (3) If any person (~~((becomes))~~) acts as a (~~((distributor))~~) licensee
8 without first securing the license required herein the excise tax shall
9 be immediately due and payable on account of all motor vehicle fuel
10 distributed or used by (~~((him))~~) the person. The director shall proceed
11 forthwith to determine from the best available sources, the amount of
12 the tax, and (~~((he))~~) the director shall immediately assess the tax in
13 the amount found due, together with a penalty of one hundred percent of
14 the tax, and shall make (~~((his))~~) a certificate of such assessment and
15 penalty. In any suit or proceeding to collect the tax or penalty, or
16 both, such certificate shall be prima facie evidence that the person
17 therein named is indebted to the state in the amount of the tax and
18 penalty therein stated. Any tax or penalty so assessed may be
19 collected in the manner prescribed in this chapter with reference to
20 delinquency in payment of the tax or by an action at law, which the
21 attorney general shall commence and prosecute to final determination at
22 the request of the director. The foregoing remedies of the state shall
23 be cumulative and no action taken pursuant to this section shall
24 relieve any person from the penal provisions of this chapter.

25 **Sec. 21.** RCW 82.36.090 and 1967 c 153 s 2 are each amended to read
26 as follows:

27 (~~((Whenever a distributor))~~) A licensee who ceases to engage in
28 business (~~((as a distributor))~~) within the state by reason of the
29 discontinuance, sale, or transfer of (~~((his))~~) the business(~~((, he))~~) shall
30 notify the director in writing at the time the discontinuance, sale, or
31 transfer takes effect. Such notice shall give the date of
32 discontinuance, and, in the event of a sale or transfer of the
33 business, the date thereof and the name and address of the purchaser or
34 transferee thereof. All taxes, penalties, and interest under this
35 chapter, not yet due and payable, shall become due and payable
36 concurrently with such discontinuance, sale, or transfer, and any such
37 (~~((distributor))~~) licensee shall make a report and pay all such taxes,

1 interest, and penalties, and surrender to the director the license
2 certificate theretofore issued to him or her.

3 If an overpayment of tax was made by the (~~distributor~~) licensee,
4 prior to the discontinuance or transfer of his or her business, such
5 overpayment may be refunded to such (~~distributor or may be credited to~~
6 ~~the transferee of such business if such transferee qualifies as a~~
7 ~~distributor under the provisions of this chapter~~) licensee.

8 **Sec. 22.** RCW 82.36.100 and 1983 1st ex.s. c 49 s 28 are each
9 amended to read as follows:

10 Every person other than a (~~distributor~~) licensee who acquires any
11 motor vehicle fuel within this state upon which payment of tax is
12 required under the provisions of this chapter, or imports such motor
13 vehicle fuel into this state and sells, distributes, or in any manner
14 uses it in this state shall, if the tax has not been paid, apply for a
15 license to carry on such activities, (~~file bond, make reports,~~)
16 comply with all (~~regulations~~) the (~~director may prescribe in respect~~
17 ~~thereto~~) provisions of this chapter, and pay an excise tax at the rate
18 computed in the manner provided in RCW 82.36.025 for each gallon
19 thereof so sold, distributed, or used during the fiscal year for which
20 such rate is applicable (~~in the manner provided for distributors, and~~
21 ~~the director shall issue a license to such person in the manner~~
22 ~~provided for issuance of licenses to distributors~~). The proceeds of
23 the tax imposed by this section shall be distributed in the manner
24 provided for the distribution of the motor vehicle fuel excise tax in
25 RCW 82.36.020. (~~However, a distributor licensed under this chapter~~
26 ~~may deliver motor vehicle fuel to an importer in individual quantities~~
27 ~~of five hundred gallons or less and assume the liability for payment of~~
28 ~~the tax to this state. Under such conditions, the importer is exempt~~
29 ~~from the requirements of this section.~~) For failure to comply with
30 this chapter such person is subject to the same penalties imposed upon
31 (~~distributors~~) licensees. The director shall pursue against such
32 persons the same procedure and remedies for audits, adjustments,
33 collection, and enforcement of this chapter as is provided with respect
34 to (~~distributors~~) licensees. Nothing in this section may be
35 construed as classifying such persons as (~~distributors~~) licensees.

36 **Sec. 23.** RCW 82.36.120 and 1994 c 262 s 21 are each amended to
37 read as follows:

1 If a ((~~distributor~~)) licensee is delinquent in the payment of an
2 obligation imposed under this chapter, the department may give notice
3 of the amount of the delinquency by registered or certified mail to all
4 persons having in their possession or under their control any credits
5 or other personal property belonging to such ((~~distributor~~)) licensee,
6 or owing any debts to such ((~~distributor~~)) licensee at the time of
7 receipt by them of such notice. Upon service, the notice and order to
8 withhold and deliver constitutes a continuing lien on property of the
9 taxpayer. The department shall include in the caption of the notice to
10 withhold and deliver "continuing lien." The effective date of a notice
11 to withhold and deliver served under this section is the date of
12 service of the notice. A person so notified shall neither transfer nor
13 make any other disposition of such credits, personal property, or debts
14 until the department consents to a transfer or other disposition. All
15 persons so notified must, within twenty days after receipt of the
16 notice, advise the department of any and all such credits, personal
17 property, or debts in their possession, under their control or owing by
18 them, as the case may be, and shall deliver upon demand the credits,
19 personal property, or debts to the department or its duly authorized
20 representative to be applied to the indebtedness involved.

21 If a person fails to answer the notice within the time prescribed
22 by this section, it is lawful for the court, upon application of the
23 department and after the time to answer the notice has expired, to
24 render judgment by default against the person for the full amount
25 claimed by the department in the notice to withhold and deliver,
26 together with costs.

27 **Sec. 24.** RCW 82.36.130 and 1961 c 15 s 82.36.130 are each amended
28 to read as follows:

29 If any ((~~distributor~~)) licensee is in default for more than ten
30 days in the payment of any excise taxes or penalties thereon, the
31 director shall issue a warrant under the official seal of ((~~his~~)) the
32 director's office directed to the sheriff of any county of the state
33 commanding him or her to levy upon and sell the goods and chattels of
34 the ((~~distributor~~)) licensee, without exemption, found within his or
35 her jurisdiction, for the payment of the amount of such delinquency,
36 with the added penalties and interest and the cost of executing the
37 warrant, and to return such warrant to the director and to pay the
38 director the money collected by virtue thereof within the time to be

1 therein specified, which shall not be less than twenty nor more than
2 sixty days from the date of the warrant. The sheriff to whom the
3 warrant is directed shall proceed upon it in all respects and with like
4 effect and in the same manner as prescribed by law in respect to
5 executions issued against goods and chattels upon judgment by a court
6 of record and shall be entitled to the same fees for his or her
7 services to be collected in the same manner.

8 **Sec. 25.** RCW 82.36.140 and 1961 c 15 s 82.36.140 are each amended
9 to read as follows:

10 In a suit or action by the state on any bond filed with the
11 director recovery thereon may be had without first having sought or
12 exhausted its remedy against the ~~((distributor))~~ licensee; nor shall
13 the fact that the state has pursued, or is in the course of pursuing,
14 any remedy against the ~~((distributor))~~ licensee waive its right to
15 collect the taxes, penalties, and interest by proceeding against such
16 bond or against any deposit of money or securities made by the
17 ~~((distributor))~~ licensee.

18 **Sec. 26.** RCW 82.36.150 and 1965 ex.s. c 79 s 5 are each amended to
19 read as follows:

20 Every ~~((distributor))~~ licensee shall keep a true and accurate
21 record on such form as the director may prescribe of all stock of
22 petroleum products on hand, of all raw gasoline, gasoline stock, diesel
23 oil, kerosene, kerosene distillates, casing-head gasoline and other
24 petroleum products needed in, or which may be used in, compounding,
25 blending, or manufacturing motor vehicle fuel; of the amount of crude
26 oil refined, the gravity thereof and the yield therefrom, as well as of
27 such other matters relating to transactions in petroleum products as
28 the director may require. Every ~~((distributor))~~ licensee shall take a
29 physical inventory of the petroleum products at least once during each
30 calendar month and have the record of such inventory and of the other
31 matters mentioned in this section available at all times for the
32 inspection of the director. Upon demand of the director every
33 ~~((distributor))~~ licensee shall furnish a statement under oath as to the
34 contents of any records to be kept hereunder.

35 ~~((Every producer shall keep a true and accurate record in such form
36 as may be prescribed by the director of all manufacture and
37 distribution of casing head gasoline, kerosene distillates and other~~

1 petroleum products used in, or which may be used in, the blending,
2 compounding, or manufacturing of motor vehicle fuel, and every broker
3 shall likewise keep a true and accurate record of all purchases of such
4 petroleum products in such manner as to disclose the vendor, the
5 quantity purchased, the correct description of the commodity, and the
6 means of transportation from such broker to the vendee. All records
7 required by this section shall be available at all times for the
8 inspection of the director or his representative who may require a
9 statement under oath as to contents thereof.))

10 **Sec. 27.** RCW 82.36.160 and 1996 c 104 s 5 are each amended to read
11 as follows:

12 Every ((distributor)) licensee shall maintain in the office of his
13 or her principal place of business in this state, for a period of five
14 years, records of motor vehicle fuel received, sold, distributed, or
15 used by the ((distributor)) licensee, in such form as the director may
16 prescribe, together with invoices, bills of lading, and other pertinent
17 papers as may be required under the provisions of this chapter.

18 Every dealer purchasing motor vehicle fuel taxable under this
19 chapter for the purpose of resale, shall maintain within this state,
20 for a period of two years a record of motor vehicle fuels received, the
21 amount of tax paid to the ((distributor)) licensee as part of the
22 purchase price, together with delivery tickets, invoices, and bills of
23 lading, and such other records as the director shall require.

24 **Sec. 28.** RCW 82.36.170 and 1961 c 15 s 82.36.170 are each amended
25 to read as follows:

26 The director may, from time to time, require additional reports
27 from ((distributors, brokers, dealers, or producers)) any licensee with
28 reference to any of the matters herein concerned. Such reports shall
29 be made and filed on forms prepared by the director.

30 NEW SECTION. **Sec. 29.** The department may require a person other
31 than a licensee engaged in the business of selling, purchasing,
32 distributing, storing, transporting, or delivering motor vehicle fuel
33 to submit periodic reports to the department regarding the disposition
34 of the fuel. The reports must be on forms prescribed by the department
35 and must contain such information as the department may require.

1 **Sec. 30.** RCW 82.36.180 and 1967 ex.s. c 89 s 6 are each amended to
2 read as follows:

3 The director, or ~~((his))~~ duly authorized agents, may make such
4 examinations of the records, stocks, facilities, and equipment of
5 ~~((distributors, producers, brokers))~~ any licensee, and service
6 stations, and such other investigations as ~~((he may deem))~~ deemed
7 necessary in carrying out the provisions of this chapter. If such
8 examinations or investigations disclose that any reports of
9 ~~((distributors of motor vehicle fuel))~~ licensees theretofore filed with
10 the director pursuant to the requirements of this chapter have shown
11 incorrectly the gallonage of motor vehicle fuel distributed or the tax
12 accruing thereon, the director may make such changes in subsequent
13 reports and payments of such ~~((distributors))~~ licensees as ~~((he may~~
14 ~~deem))~~ deemed necessary to correct the errors disclosed.

15 Every such ~~((distributor))~~ licensee or such other person not
16 maintaining records in this state so that an audit of such records may
17 be made by the director or ~~((his))~~ a duly authorized representative
18 shall be required to make the necessary records available to the
19 director ~~((at his))~~ upon request and at ~~((his))~~ a designated office
20 within this state; or, in lieu thereof, the director or ~~((his))~~ a duly
21 authorized representative shall proceed to any out-of-state office at
22 which the records are prepared and maintained to make such examination.

23 **Sec. 31.** RCW 82.36.190 and 1990 c 250 s 80 are each amended to
24 read as follows:

25 The department shall suspend or revoke the license of any
26 ~~((distributor))~~ licensee refusing or neglecting to comply with any
27 provision of this chapter. The department shall mail by registered
28 mail addressed to such ~~((distributor))~~ licensee at ~~((his))~~ the last
29 known address a notice of intention to cancel, which notice shall give
30 the reason for cancellation. The cancellation shall become effective
31 without further notice if within ten days from the mailing of the
32 notice the ~~((distributor))~~ licensee has not made good his or her
33 default or delinquency.

34 The department may cancel any license issued to any ~~((distributor))~~
35 licensee, such cancellation to become effective sixty days from the
36 date of receipt of the written request of such ~~((distributor))~~ licensee
37 for cancellation thereof, and the department may cancel the license of
38 any ~~((distributor))~~ licensee upon investigation and sixty days notice

1 mailed to the last known address of such ~~((distributor))~~ licensee if
2 the department ascertains and finds that the person to whom the license
3 was issued is no longer engaged in ~~((the))~~ business ~~((of—a~~
4 ~~distributor))~~, and has not been so engaged for the period of six months
5 prior to such cancellation. No license shall be canceled upon the
6 request of any ~~((distributor))~~ licensee unless the ~~((distributor))~~
7 licensee, prior to the date of such cancellation, pays to the state all
8 taxes imposed by the provisions of this chapter, together with all
9 penalties accruing by reason of any failure on the part of the
10 ~~((distributor))~~ licensee to make accurate reports or pay said taxes and
11 penalties.

12 In the event the license of any ~~((distributor))~~ licensee is
13 canceled, and in the further event that the ~~((distributor))~~ licensee
14 pays to the state all excise taxes due and payable by him or her upon
15 the receipt, sale, or use of motor vehicle fuel, together with any and
16 all penalties accruing by reason of any failure on the part of the
17 ~~((distributor))~~ licensee to make accurate reports or pay said taxes and
18 penalties, the department shall cancel the bond filed by the
19 ~~((distributor))~~ licensee.

20 **Sec. 32.** RCW 82.36.200 and 1965 ex.s. c 79 s 7 are each amended to
21 read as follows:

22 The director or ~~((his))~~ authorized agents may at any time during
23 normal business hours examine the records, stocks, facilities and
24 equipment of any person engaged in the transportation of motor vehicle
25 fuel within the state of Washington for the purpose of checking
26 shipments or use of motor vehicle fuel, detecting diversions thereof or
27 evasion of taxes on same in enforcing the provisions of this chapter.

28 **Sec. 33.** RCW 82.36.210 and 1965 ex.s. c 79 s 8 are each amended to
29 read as follows:

30 Every person operating any conveyance for the purpose of hauling,
31 transporting or delivering motor vehicle fuel in bulk ~~((to points in~~
32 ~~this state from any point without this state))~~, shall ~~((before entering~~
33 ~~upon the public highways of this state with such conveyance,))~~ have and
34 possess during the entire time they are hauling motor vehicle fuel, an
35 invoice, bill of sale, or other statement showing the ~~((true))~~ name
36 ~~((and))~~, address, and license number of the seller or consignor, the
37 destination, name, and address of the purchaser or consignee, license

1 number, if ((any)) applicable, and the number of gallons. The person
2 hauling such motor vehicle fuel shall at the request of any ((~~sheriff,~~
3 ~~deputy sheriff, constable, highway patrolman~~)) law enforcement officer,
4 or authorized representative of the department, or other person
5 authorized by law to inquire into, or investigate said matters, produce
6 ((~~and offer~~)) for inspection such invoice, bill of sale, or other
7 statement and shall permit such official to inspect and gauge the
8 contents of the vehicle. ((~~If the hauler fails to produce the invoice,~~
9 ~~bill of sale, or other statement, or if when produced it fails to~~
10 ~~disclose the aforesaid information, the officer or other person~~
11 ~~authorized to make inquiry, shall take and impound the motor vehicle~~
12 ~~fuel together with the conveying equipment until the tax on the motor~~
13 ~~vehicle fuel, together with penalty equal to one hundred percent of the~~
14 ~~tax, and other expenses, charges, and costs have been paid. In case of~~
15 ~~default, and the taking and impounding herein provided for, the tax,~~
16 ~~damages, and costs shall be collected, even though the full excise tax~~
17 ~~may have already been paid on the motor vehicle fuel. In case the tax,~~
18 ~~damages and other charges are not paid within forty eight hours after~~
19 ~~the taking of said property, the director may proceed to sell it in the~~
20 ~~mode and manner provided by law for the sale of personal property under~~
21 ~~execution.~~))

22 **Sec. 34.** RCW 82.36.230 and 1993 c 54 s 4 are each amended to read
23 as follows:

24 The provisions of this chapter requiring the payment of taxes do
25 not apply to motor vehicle fuel imported into the state in interstate
26 or foreign commerce and intended to be sold while in interstate or
27 foreign commerce, nor to motor vehicle fuel exported from this state by
28 a ((~~qualified distributor~~)) licensee nor to any motor vehicle fuel sold
29 by a ((~~qualified distributor~~)) licensee to the armed forces of the
30 United States or to the national guard for use exclusively in ships or
31 for export from this state. The ((~~distributor~~)) licensee shall report
32 such imports, exports and sales to the department at such times, on
33 such forms, and in such detail as the department may require, otherwise
34 the exemption granted in this section is null and void, and all fuel
35 shall be considered distributed in this state fully subject to the
36 provisions of this chapter. Each invoice covering exempt sales shall
37 have the statement "Ex Washington Motor Vehicle Fuel Tax" clearly
38 marked thereon.

1 To claim any exemption from taxes under this section on account of
2 sales by a (~~licensed distributor~~) licensee of motor vehicle fuel for
3 export, the purchaser shall obtain from the selling (~~distributor~~)
4 licensee, and such selling (~~distributor~~) licensee must furnish the
5 purchaser, an invoice giving such details of the sale for export as the
6 department may require, copies of which shall be furnished the
7 department and the entity of the state or foreign jurisdiction of
8 destination which is charged by the laws of that state or foreign
9 jurisdiction with the control or monitoring, or both, of the sales or
10 movement of motor vehicle fuel in that state or foreign jurisdiction.
11 For the purposes of this section, motor vehicle fuel distributed to a
12 federally recognized Indian tribal reservation located within the state
13 of Washington is not considered exported outside this state.

14 To claim any (~~exemption from taxes under this section~~) refund of
15 taxes previously paid on account of sales of motor vehicle fuel to the
16 armed forces of the United States or to the national guard, the
17 (~~distributor~~) licensee shall be required to execute an exemption
18 certificate in such form as shall be furnished by the department,
19 containing a certified statement by an authorized officer of the armed
20 forces having actual knowledge of the purpose for which the exemption
21 is claimed. (~~Any claim for exemption based on such sales shall be~~
22 ~~made by the distributor within six months of the date of sale.~~) The
23 provisions of this section exempting motor vehicle fuel sold to the
24 armed forces of the United States or to the national guard from the tax
25 imposed hereunder do not apply to any motor vehicle fuel sold to
26 contractors purchasing such fuel either for their own account or as the
27 agents of the United States or the national guard for use in the
28 performance of contracts with the armed forces of the United States or
29 the national guard.

30 The department may at any time require of any (~~distributor~~)
31 licensee any information the department deems necessary to determine
32 the validity of the claimed exemption, and failure to supply such data
33 will constitute a waiver of all right to the exemption claimed. The
34 department is hereby empowered with full authority to promulgate rules
35 and regulations and to prescribe forms to be used by (~~distributors~~)
36 licensees in reporting to the department so as to prevent evasion of
37 the tax imposed by this chapter.

38 Upon request from the officials to whom are entrusted the
39 enforcement of the motor vehicle fuel tax law of any other state, the

1 District of Columbia, the United States, its territories and
2 possessions, the provinces, or the Dominion of Canada, the department
3 may forward to such officials any information which the department may
4 have relative to the import or export of any motor vehicle fuel by any
5 (~~distributor~~) licensee: PROVIDED, That such governmental unit
6 furnish like information to this state.

7 NEW SECTION. **Sec. 35.** A licensee, other than a motor vehicle fuel
8 exporter, is entitled to a refund of motor vehicle fuel tax previously
9 paid on motor vehicle fuel which is purchased from the licensee by a
10 person who is exempt from payment of the motor vehicle fuel tax imposed
11 by this chapter. Application for the refund shall be accompanied by an
12 invoice or proof satisfactory to the department documenting each sale
13 wherein the purchaser was exempt the motor vehicle fuel tax. Claims
14 for refunds shall be made under this chapter.

15 **Sec. 36.** RCW 82.36.280 and 1993 c 141 s 1 are each amended to read
16 as follows:

17 Any person who uses any motor vehicle fuel for the purpose of
18 operating any internal combustion engine not used on or in conjunction
19 with any motor vehicle licensed to be operated over and along any of
20 the public highways, and as the motive power thereof, upon which motor
21 vehicle fuel excise tax has been paid, shall be entitled to and shall
22 receive a refund of the amount of the motor vehicle fuel excise tax
23 paid on each gallon of motor vehicle fuel so used, whether such motor
24 vehicle excise tax has been paid either directly to the vendor from
25 whom the motor vehicle fuel was purchased or indirectly by adding the
26 amount of such excise tax to the price of such fuel. No refund shall
27 be made for motor vehicle fuel consumed by any motor vehicle as herein
28 defined that is required to be registered and licensed as provided in
29 chapter 46.16 RCW; and is operated over and along any public highway
30 except that a refund shall be allowed for motor vehicle fuel consumed:

31 (1) In a motor vehicle owned by the United States that is operated
32 off the public highways for official use;

33 (2) By auxiliary equipment not used for motive power, provided such
34 consumption is accurately measured by a metering device that has been
35 specifically approved by the department or is established by either of
36 the following formulae:

1 (a) For fuel used in pumping fuel or heating oils by a power take-
2 off unit on a delivery truck, refund shall be allowed claimant for tax
3 paid on fuel purchased at the rate of three-fourths of one gallon for
4 each one thousand gallons of fuel delivered: PROVIDED, That claimant
5 when presenting his or her claim to the department in accordance with
6 the provisions of this chapter, shall provide to said claim, invoices
7 of fuel oil delivered, or such other appropriate information as may be
8 required by the department to substantiate his or her claim; or

9 (b) For fuel used in operating a power take-off unit on a cement
10 mixer truck or load compactor on a garbage truck, claimant shall be
11 allowed a refund of twenty-five percent of the tax paid on all fuel
12 used in such a truck; and

13 (c) The department is authorized to establish by rule additional
14 formulae for determining fuel usage when operating other types of
15 equipment by means of power take-off units when direct measurement of
16 the fuel used is not feasible. The department is also authorized to
17 adopt rules regarding the usage of on board computers for the
18 production of records required by this chapter(~~(; and~~

19 ~~(3) Before December 31, 1992, in a commercial vehicle as defined in~~
20 ~~RCW 46.04.140 or a farm vehicle as defined in RCW 46.04.181, if the~~
21 ~~motor vehicle fuel consumed contains nine and one half percent or more~~
22 ~~by volume of alcohol and the commercial vehicle or farm vehicle is~~
23 ~~operated off the public highways of this state)).~~

24 **Sec. 37.** RCW 82.36.300 and 1963 ex.s. c 22 s 21 are each amended
25 to read as follows:

26 Every person who shall export any motor vehicle fuel for use
27 outside of this state and who has paid the motor vehicle fuel excise
28 tax upon such motor vehicle fuel shall be entitled to and shall receive
29 a refund of the amount of the motor vehicle fuel excise tax paid on
30 each gallon of motor vehicle fuel so exported. For the purposes of
31 this section, motor vehicle fuel distributed to a federally recognized
32 Indian tribal reservation located within the state of Washington is not
33 considered exported outside this state.

34 **Sec. 38.** RCW 82.36.310 and 1995 c 318 s 3 are each amended to read
35 as follows:

36 Any person claiming a refund for motor vehicle fuel used or
37 exported as in this chapter provided shall not be entitled to receive

1 such refund until he presents to the director a claim upon forms to be
2 provided by the director with such information as the director shall
3 require, which claim to be valid shall in all cases be accompanied by
4 the ((original)) invoice or invoices issued to the claimant at the time
5 of the purchases of the motor vehicle fuel, approved as to invoice form
6 by the director(~~(:— PROVIDED, That in the event of the loss or~~
7 ~~destruction of the original invoice or invoices, the person claiming a~~
8 ~~refund may submit in lieu thereof a duplicate copy of such invoice~~
9 ~~certified by the vendor, but no payment of refund based upon such~~
10 ~~duplicate invoice shall be made until after expiration of such~~
11 ~~statutory period specified in RCW 82.36.330 for filing of refund~~
12 ~~applications)). The requirement to provide invoices may be waived for
13 small refund amounts, as determined by the department. Claims for
14 refund of motor vehicle fuel tax must be at least twenty dollars.~~

15 Any person claiming refund by reason of exportation of motor
16 vehicle fuel shall in addition to the invoices required furnish to the
17 director the export certificate therefor, and the signature on the
18 exportation certificate shall be certified by a notary public. In all
19 cases the claim shall be signed by the person claiming the refund, if
20 it is a corporation, by some proper officer of the corporation, or if
21 it is a limited liability company, by some proper manager or member of
22 the limited liability company.

23 **Sec. 39.** RCW 82.36.330 and 1971 ex.s. c 180 s 9 are each amended
24 to read as follows:

25 Upon the approval of the director of the claim for refund, the
26 state treasurer shall draw a warrant upon the state treasury for the
27 amount of the claim in favor of the person making such claim and the
28 warrant shall be paid from the excise tax collected on motor vehicle
29 fuel: PROVIDED, That the state treasurer shall deduct from each marine
30 use refund claim an amount equivalent to one cent per gallon and shall
31 deposit the same in the coastal protection fund created by RCW
32 90.48.390. Applications for refunds of excise tax shall be filed in
33 the office of the director not later than the close of the last
34 business day of a period thirteen months from the date of purchase of
35 such motor fuel, and if not filed within this period the right to
36 refund shall be forever barred, except that such limitation shall not
37 apply to claims for loss or destruction of motor vehicle fuel as
38 provided by the provisions of RCW 82.36.370. The department shall pay

1 interest of one percent on any refund payable under this chapter that
2 is issued more than thirty state business days after the receipt of a
3 claim properly filed and completed in accordance with this section.
4 After the end of the thirty business-day period, additional interest
5 shall accrue at the rate of one percent on the amount payable for each
6 thirty calendar-day period, until the refund is issued. Any person or
7 the member of any firm or the officer or agent of any corporation who
8 makes any false statement in any claim required for the refund of
9 excise tax, as provided in this chapter, or who collects or causes to
10 be repaid to him or to any other person any such refund without being
11 entitled to the same under the provisions of this chapter shall be
12 guilty of a gross misdemeanor.

13 **Sec. 40.** RCW 82.36.335 and 1997 c 183 s 8 are each amended to read
14 as follows:

15 In lieu of the collection and refund of the tax on motor vehicle
16 fuel used by a ((distributor)) licensee in such a manner as would
17 entitle a purchaser to claim refund under this chapter, credit may be
18 given the ((distributor)) licensee upon the ((distributor's))
19 licensee's tax return in the determination of the amount of the
20 ((distributor's)) licensee's tax. Payment credits shall not be carried
21 forward and applied to subsequent tax returns.

22 **Sec. 41.** RCW 82.36.350 and 1961 c 15 s 82.36.350 are each amended
23 to read as follows:

24 If upon investigation the director determines that any claim has
25 been supported by an invoice or invoices fraudulently made or altered
26 in any manner to support the claim, ((he)) the director may suspend the
27 pending and all further refunds to any such person making the claim for
28 a period not to exceed one year.

29 **Sec. 42.** RCW 82.36.370 and 1967 c 153 s 5 are each amended to read
30 as follows:

31 (1) A refund shall be made in the manner provided in this chapter
32 or a credit given allowing for the excise tax paid or accrued on all
33 motor vehicle fuel which is lost or destroyed, while applicant shall be
34 the owner thereof, through fire, lightning, flood, wind storm, or
35 explosion.

1 (2) A refund shall be made in the manner provided in this chapter
2 or a credit given allowing for the excise tax paid or accrued on all
3 motor vehicle fuel of five hundred gallons or more which is lost or
4 destroyed, while applicant shall be the owner thereof, through leakage
5 or other casualty except evaporation, shrinkage or unknown causes:
6 PROVIDED, That the director shall be notified in writing as to the full
7 circumstances surrounding such loss or destruction and the amount of
8 the loss or destruction within thirty days from the day of discovery of
9 such loss or destruction.

10 (3) Recovery for such loss or destruction under either subsection
11 (1) or (2) must be susceptible to positive proof thereby enabling the
12 director to conduct such investigation and require such information as
13 ~~((he))~~ the director may deem necessary.

14 In the event that the director is not satisfied that the fuel was
15 lost or destroyed as claimed, wherefore required information or proof
16 as required hereunder is not sufficient to substantiate the accuracy of
17 the claim, ~~((he))~~ the director may deem as sufficient cause the denial
18 of all right relating to the refund or credit for the excise tax on
19 motor vehicle fuel alleged to be lost or destroyed.

20 NEW SECTION. **Sec. 43.** A motor vehicle fuel distributor, motor
21 vehicle fuel importer, or motor vehicle fuel blender, under rules
22 adopted by the department, is entitled to a refund of the tax paid on
23 those sales of motor vehicle fuel for which no consideration has been
24 received from or on behalf of the purchaser and that has been declared
25 to be worthless accounts receivable. The amount of tax refunded must
26 not exceed the amount of tax paid by the motor vehicle fuel
27 distributor, motor vehicle fuel importer, or motor vehicle fuel blender
28 under this chapter. If the motor vehicle fuel distributor, motor
29 vehicle fuel importer, or motor vehicle fuel blender subsequently
30 collects any amount from the account declared worthless, the amount
31 collected shall be apportioned between the charges for the fuel and tax
32 thereon. The motor vehicle fuel tax collected must be returned to the
33 department.

34 **Sec. 44.** RCW 82.36.375 and 1965 ex.s. c 79 s 16 are each amended
35 to read as follows:

36 Unless otherwise provided, any credit for erroneous overpayment of
37 tax made by a ~~((distributor))~~ licensee to be taken on a subsequent

1 return or any claim of refund for tax erroneously overpaid by a
2 ((distributor)) licensee, pursuant to the provisions of RCW 82.36.090,
3 must be so taken within ((three)) five years after the date on which
4 the overpayment was made to the state. Failure to take such credit or
5 claim such refund within the time prescribed in this section shall
6 constitute waiver of any and all demands against this state on account
7 of overpayment hereunder.

8 Except in the case of a fraudulent report or neglect or refusal to
9 make a report every notice of additional tax, penalty or interest
10 assessed hereunder shall be served on the ((distributor)) licensee
11 within ((three)) five years from the date upon which such additional
12 taxes became due.

13 **Sec. 45.** RCW 82.36.390 and 1996 c 104 s 6 are each amended to read
14 as follows:

15 Any person who(~~(, through false statement, trick, or device, or~~
16 ~~otherwise,)~~) obtains motor vehicle fuel for export and fails to export
17 the same or any portion thereof, or causes such motor vehicle fuel or
18 any thereof not to be exported, or who diverts said motor vehicle fuel
19 or any thereof or who causes it to be diverted from interstate or
20 foreign transit begun in this state, or who unlawfully returns such
21 fuel or any thereof to this state and sells or uses it or any thereof
22 in this state or causes it or any thereof to be used or sold in this
23 state and fails to notify the ((distributor)) licensee from whom such
24 motor vehicle fuel was originally purchased (~~(of his or her act)~~), and
25 any ((distributor)) licensee or ((other)) person who conspires with any
26 person to withhold from export, or divert from interstate or foreign
27 transit begun in this state, or to return motor vehicle fuel to this
28 state for sale or use with intent to avoid any of the taxes imposed by
29 this chapter, is guilty of a felony, or gross misdemeanor in accordance
30 with the theft and anticipatory provisions of Title 9A RCW. Each
31 shipment illegally diverted or illegally returned shall be a separate
32 offense, and the unit of each shipment shall be the cargo of one
33 vessel, or one railroad carload, or one automobile truck load, or such
34 truck and trailer load, or one drum, or one barrel, or one case or one
35 can.

36 **Sec. 46.** RCW 82.36.400 and 1971 ex.s. c 156 s 3 are each amended
37 to read as follows:

1 It shall be unlawful for any person to commit any of the following
2 acts:

3 (1) To display, or cause to permit to be displayed, or to have in
4 possession, any motor vehicle fuel (~~((distributor's))~~) license knowing
5 the same to be fictitious or to have been suspended, canceled, revoked
6 or altered;

7 (2) To lend to, or knowingly permit the use of, by one not entitled
8 thereto, any motor vehicle fuel (~~((distributor's))~~) license issued to the
9 person lending it or permitting it to be used;

10 (3) To display or to represent as one's own any motor vehicle fuel
11 (~~((distributor's))~~) license not issued to the person displaying the same;

12 (4) To use a false or fictitious name or give a false or fictitious
13 address in any application or form required under the provisions of
14 this chapter, or otherwise commit a fraud in any application, record,
15 or report;

16 (5) To refuse to permit the director, or any agent appointed by him
17 or her in writing, to examine his or her books, records, papers,
18 storage tanks, or other equipment pertaining to the use or sale and
19 delivery of motor vehicle fuels within the state.

20 Except as otherwise provided, any person violating any of the
21 provisions of this chapter shall be guilty of a gross misdemeanor and
22 shall, upon conviction thereof, be sentenced to pay a fine of not less
23 than five hundred dollars nor more than one thousand dollars and costs
24 of prosecution, or imprisonment for not more than one year, or both.

25 NEW SECTION. **Sec. 47.** A motor vehicle fuel distributor who incurs
26 liability in December 1998 for the motor vehicle fuel tax imposed under
27 this chapter shall report the liability and pay the tax in January 1999
28 in the manner required by this chapter as it existed before January 1,
29 1999.

30 A motor vehicle fuel distributor shall inventory all motor vehicle
31 fuel that is on hand or in possession as of 12:01 a.m. on January 1,
32 1999, and is not in the bulk transfer-terminal system and shall report
33 the results of the inventory to the department no later than the last
34 business day of February 1999. The report of inventory must be made on
35 a form prescribed by the department.

36 A motor vehicle fuel distributor may pay the tax due on motor
37 vehicle fuel in inventory any time before February 28, 2000, but at
38 least one-twelfth of the amount due must be paid by the last day of

1 each month starting with February 1999. Payments not received in
2 accordance with this section are late and are subject to the interest
3 and penalty provisions of this chapter. Payments made after February
4 2000 are late and are subject to the interest and penalty provisions of
5 this chapter.

6 NEW SECTION. **Sec. 48.** (1) It is intended that the ultimate
7 liability for the tax imposed under this chapter be upon the motor
8 vehicle fuel user, regardless of the manner in which collection of the
9 tax is provided for in this chapter. The tax on motor vehicle fuel
10 imposed under this chapter, if not previously imposed and paid, must be
11 paid over to the department by the users of such motor vehicle fuel,
12 unless such use is exempt from the motor vehicle fuel tax.

13 (2) This section does not apply to agreements entered into under
14 RCW 82.36.450 between the department and federally recognized Indian
15 tribes, nor does it apply to the consent decrees entered in
16 *Confederated Tribes of the Colville Reservation v. Washington*
17 *Department of Licensing*, No. CS-92-248-JLQ (E.D. Wash.) and *Teo v.*
18 *Steffenson*, No. CY-93-3050-AAM (E.D. Wash.).

19 NEW SECTION. **Sec. 49.** The department of licensing may enter into
20 a motor vehicle fuel tax cooperative agreement with another state or
21 Canadian province for the administration, collection, and enforcement
22 of each state's or Canadian province's motor vehicle fuel taxes.

23 **Sec. 50.** RCW 82.38.020 and 1995 c 287 s 3 are each amended to read
24 as follows:

25 (~~As used in this chapter:~~

26 (1) ~~"Person" means every natural person, fiduciary, association, or~~
27 ~~corporation. The term "person" as applied to an association means and~~
28 ~~includes the partners or members thereof, and as applied to~~
29 ~~corporations, the officers thereof.~~

30 (2) ~~"Department" means the department of licensing.~~

31 (3) ~~"Highway" means every way or place open to the use of the~~
32 ~~public, as a matter of right, for the purpose of vehicular travel.~~

33 (4) ~~"Motor vehicle" means every self-propelled vehicle designed for~~
34 ~~operation upon land utilizing special fuel as the means of propulsion.~~

35 (5) ~~"Special fuel" means and includes all combustible gases and~~
36 ~~liquids suitable for the generation of power for propulsion of motor~~

1 vehicles, except that it does not include motor vehicle fuel as defined
2 in chapter 82.36 RCW.

3 (6) "Bulk storage" means the placing of special fuel by a special
4 fuel dealer into a receptacle other than the fuel supply tank of a
5 motor vehicle.

6 (7) "Special fuel dealer" means any person engaged in the business
7 of delivering special fuel into the fuel supply tank or tanks of a
8 motor vehicle not then owned or controlled by him, or into bulk storage
9 facilities for subsequent use in a motor vehicle. For this purpose the
10 term "fuel supply tank or tanks" does not include cargo tanks even
11 though fuel is withdrawn directly therefrom for propulsion of the
12 vehicle.

13 (8) "Special fuel user" means any person purchasing special fuel
14 into bulk storage without payment of the special fuel tax for
15 subsequent use in a motor vehicle, or any person engaged in interstate
16 commercial operation of motor vehicles any part of which is within this
17 state.

18 (9) "Service station" means any location at which fueling of motor
19 vehicles is offered to the general public.

20 (10) "Unbonded service station" means any service station at which
21 an unbonded special fuel dealer regularly makes sales of special fuel
22 by means of delivery thereof into the fuel supply tanks of motor
23 vehicles.

24 (11) "Bond" means:—(a) A bond duly executed by such special fuel
25 dealer or special fuel user as principal with a corporate surety
26 qualified under the provisions of chapter 48.28 RCW which bond shall be
27 payable to the state of Washington conditioned upon faithful
28 performance of all requirements of this chapter, including the payment
29 of all taxes, penalties, and other obligations of such dealer, arising
30 out of this chapter; or (b) a deposit with the state treasurer by the
31 special fuel dealer or special fuel user, under such terms and
32 conditions as the department may prescribe, a like amount of lawful
33 money of the United States or bonds or other obligations of the United
34 States, the state of Washington, or any county of said state, of an
35 actual market value not less than the amount so fixed by the
36 department; or (c) such other instruments as the department may
37 determine and prescribe by rule to protect the interests of the state
38 and to insure compliance of the requirements of this chapter.

1 ~~(12) "Lessor" means any person (a) whose principal business is the~~
2 ~~bona fide leasing or renting of motor vehicles without drivers for~~
3 ~~compensation to the general public, and (b) who maintains established~~
4 ~~places of business and whose lease or rental contracts require such~~
5 ~~motor vehicles to be returned to the established places of business.~~

6 ~~(13) "Natural gas" means naturally occurring mixtures of~~
7 ~~hydrocarbon gases and vapors consisting principally of methane, whether~~
8 ~~in gaseous or liquid form.~~

9 ~~(14) "Standard pressure and temperature" means fourteen and~~
10 ~~seventy-three hundredths pounds of pressure per square inch at sixty~~
11 ~~degrees Fahrenheit.~~

12 ~~(15) "Evasion" or "evade" means to diminish or avoid the~~
13 ~~computation, assessment, or payment of authorized taxes or fees~~
14 ~~through:~~

15 ~~(a) A knowing: False statement, misrepresentation of fact, or~~
16 ~~other act of deception; or~~

17 ~~(b) An intentional: Omission, failure to file a return or report,~~
18 ~~or other act of deception.)) The definitions in this section apply~~
19 ~~throughout this chapter unless the context clearly requires otherwise.~~

20 (1) "Blended special fuel" means a mixture of undyed diesel fuel
21 and another liquid, other than a de minimus amount of the liquid, that
22 can be used as a fuel to propel a motor vehicle.

23 (2) "Blender" means a person who produces blended special fuel
24 outside the bulk transfer-terminal system.

25 (3) "Bond" means a bond duly executed with a corporate surety
26 qualified under chapter 48.28 RCW, which bond is payable to the state
27 of Washington conditioned upon faithful performance of all requirements
28 of this chapter, including the payment of all taxes, penalties, and
29 other obligations arising out of this chapter.

30 (4) "Bulk transfer-terminal system" means the special fuel
31 distribution system consisting of refineries, pipelines, vessels, and
32 terminals. Special fuel in a refinery, pipeline, vessel, or terminal
33 is in the bulk transfer-terminal system. Special fuel in the fuel tank
34 of an engine, motor vehicle, or in a railcar, trailer, truck, or other
35 equipment suitable for ground transportation is not in the bulk
36 transfer-terminal system.

37 (5) "Bulk transfer" means a transfer of special fuel by pipeline or
38 vessel.

1 (6) "Bulk storage" means the placing of special fuel into a
2 receptacle other than the fuel supply tank of a motor vehicle.

3 (7) "Department" means the department of licensing.

4 (8) "Dyed special fuel user" means a person authorized by the
5 Internal Revenue Code to operate a motor vehicle on the highway using
6 dyed special fuel, in which the use is not exempt from the special fuel
7 tax.

8 (9) "Evasion" or "evade" means to diminish or avoid the
9 computation, assessment, or payment of authorized taxes or fees
10 through:

11 (a) A knowing: False statement; misrepresentation of fact; or
12 other act of deception; or

13 (b) An intentional: Omission; failure to file a return or report;
14 or other act of deception.

15 (10) "Export" means to obtain special fuel in this state for sales
16 or distribution outside the state.

17 (11) "Highway" means every way or place open to the use of the
18 public, as a matter of right, for the purpose of vehicular travel.

19 (12) "Import" means to bring special fuel into this state by a
20 means of conveyance other than the fuel supply tank of a motor vehicle.

21 (13) "International fuel tax agreement licensee" means a special
22 fuel user operating qualified motor vehicles in interstate commerce and
23 licensed by the department under the international fuel tax agreement.

24 (14) "Lessor" means a person: (a) Whose principal business is the
25 bona fide leasing or renting of motor vehicles without drivers for
26 compensation to the general public; and (b) who maintains established
27 places of business and whose lease or rental contracts require the
28 motor vehicles to be returned to the established places of business.

29 (15) "Licensee" means a person holding a license issued under this
30 chapter.

31 (16) "Motor vehicle" means a self-propelled vehicle designed for
32 operation upon land utilizing special fuel as the means of propulsion.

33 (17) "Natural gas" means naturally occurring mixtures of
34 hydrocarbon gases and vapors consisting principally of methane, whether
35 in gaseous or liquid form.

36 (18) "Person" means a natural person, fiduciary, association, or
37 corporation. The term "person" as applied to an association means and
38 includes the partners or members thereof, and as applied to
39 corporations, the officers thereof.

1 (19) "Position holder" means a person who holds the inventory
2 position in special fuel, as reflected by the records of the terminal
3 operator. A person holds the inventory position in special fuel if the
4 person has a contractual agreement with the terminal for the use of
5 storage facilities and terminating services at a terminal with respect
6 to special fuel. "Position holder" includes a terminal operator that
7 owns special fuel in their terminal.

8 (20) "Rack" means a mechanism for delivering special fuel from a
9 refinery or terminal into a truck, trailer, railcar, or other means of
10 nonbulk transfer.

11 (21) "Refiner" means a person who owns, operates, or otherwise
12 controls a refinery.

13 (22) "Removal" means a physical transfer of special fuel other than
14 by evaporation, loss, or destruction.

15 (23) "Special fuel" means and includes all combustible gases and
16 liquids suitable for the generation of power for propulsion of motor
17 vehicles, except that it does not include motor vehicle fuel as defined
18 in chapter 82.36 RCW, nor does it include dyed special fuel as defined
19 by federal regulations. However, if the federal regulations authorize
20 dyed special fuel to be used in highway vehicles, that usage is
21 considered taxable under this chapter, unless otherwise exempted.

22 (24) "Special fuel distributor" means a person who acquires special
23 fuel from a supplier, distributor, or licensee for subsequent sale and
24 distribution.

25 (25) "Special fuel exporter" means a person, who purchases special
26 fuel in this state and directly exports the fuel by a means other than
27 the bulk transfer-terminal system to a destination outside of the
28 state.

29 (26) "Special fuel importer" means a person who imports special
30 fuel into the state by a means other than the bulk transfer-terminal
31 system. If the importer of record is acting as an agent, the person
32 for whom the agent is acting is the importer. If there is no importer
33 of record, the owner of the special fuel at the time of importation is
34 the importer.

35 (27) "Special fuel supplier" means a person who owns and stores
36 special fuel in a terminal facility or who refines and stores special
37 fuel at a refinery.

1 (28) "Special fuel user" means a person engaged in uses of special
2 fuel that are not specifically exempted from the special fuel tax
3 imposed under this chapter.

4 (29) "Terminal" means a special fuel storage and distribution
5 facility that has been assigned a terminal control number by the
6 internal revenue service, is supplied by pipeline or vessel, and from
7 which reportable special fuel is removed at a rack.

8 (30) "Terminal operator" means a person who owns, operates, or
9 otherwise controls a terminal.

10 (31) "Two-party exchange" or "buy-sell agreement" means a
11 transaction in which taxable special fuel is transferred from one
12 licensed supplier to another licensed supplier under an exchange or
13 buy-sell agreement whereby the supplier that is the position holder
14 agrees to deliver taxable special fuel to the other supplier or the
15 other supplier's customer at the rack of the terminal at which the
16 delivering supplier is the position holder.

17 **Sec. 51.** RCW 82.38.030 and 1996 c 104 s 7 are each amended to read
18 as follows:

19 (1) There is hereby levied and imposed upon special fuel users a
20 tax at the rate computed in the manner provided in RCW 82.36.025
21 (~~(per))~~ on each gallon of special fuel, or each one hundred cubic feet
22 of compressed natural gas, measured at standard pressure and
23 temperature (~~(on the use of special fuel in any motor vehicle operated~~
24 ~~upon the highways of this state during the fiscal year for which such~~
25 ~~rate is applicable))~~).

26 (2) The tax (~~(shall be collected by the special fuel dealer and~~
27 ~~shall be paid over to the department as hereinafter provided:~~—(a) With
28 respect to all special fuel delivered by a special fuel dealer into
29 supply tanks of motor vehicles or into storage facilities used for the
30 fueling of motor vehicles at unbonded service stations in this state;
31 or (b) in all other transactions where the purchaser is not the holder
32 of a valid special fuel license issued pursuant to this chapter
33 allowing the purchase of untaxed special fuel, except sales of special
34 fuel for export. To claim an exemption on account of sales by a
35 licensed special fuel dealer for export, the purchaser shall obtain
36 from the selling special fuel dealer, and such selling special fuel
37 dealer must furnish the purchaser, an invoice giving such details of
38 the sale for export as the director may require, copies of which shall

1 be furnished the department and the entity of the state or foreign
2 jurisdiction of destination which is charged by the laws of that state
3 or foreign jurisdiction with the control or monitoring or both, of the
4 sales or movement of special fuel in that state or foreign
5 jurisdiction.

6 (3) The tax shall be paid over to the department by the special
7 fuel user as hereinafter provided with respect to the taxable use of
8 special fuel upon which the tax has not previously been imposed.

9 It is expressly provided that delivery of special fuel may be made
10 without collecting the tax otherwise imposed, when such deliveries are
11 made by a bonded special fuel dealer to special fuel users who are
12 authorized by the department as hereinafter provided, to purchase fuel
13 without payment of tax to the bonded special fuel dealer.

14 (4)) imposed by subsection (1) of this section is imposed when:

15 (a) Special fuel is removed in this state from a terminal if the
16 special fuel is removed at the rack unless the removal is to a licensed
17 exporter for direct delivery to a destination outside of the state, or
18 the removal is to a special fuel distributor for direct delivery to an
19 international fuel tax agreement licensee under section 84 of this act;

20 (b) Special fuel is removed in this state from a refinery if either
21 of the following applies:

22 (i) The removal is by bulk transfer and the refiner or the owner of
23 the special fuel immediately before the removal is not a licensee; or

24 (ii) The removal is at the refinery rack unless the removal is to
25 a licensed exporter for direct delivery to a destination outside of the
26 state, or the removal is to a special fuel distributor for direct
27 delivery to an international fuel tax agreement licensee under section
28 84 of this act;

29 (c) Special fuel enters into this state for sale, consumption, use,
30 or storage if either of the following applies:

31 (i) The entry is by bulk transfer and the importer is not a
32 licensee; or

33 (ii) The entry is not by bulk transfer;

34 (d) Special fuel is removed in this state to an unlicensed entity
35 unless there was a prior taxable removal, entry, or sale of the special
36 fuel;

37 (e) Blended special fuel is removed or sold in this state by the
38 blender of the fuel. The number of gallons of blended special fuel
39 subject to tax is the difference between the total number of gallons of

1 blended special fuel removed or sold and the number of gallons of
2 previously taxed special fuel used to produced the blended special
3 fuel;

4 (f) Dyed special fuel is used on a highway, as authorized by the
5 Internal Revenue Code, unless the use is exempt from the special fuel
6 tax; and

7 (g) Special fuel purchased by an international fuel tax agreement
8 licensee under section 84 of this act is used on a highway.

9 (3) The tax (~~(required)~~) imposed by this chapter, if required to be
10 collected by the (~~(seller)~~) licensee, is held in trust by the
11 (~~(seller)~~) licensee until paid to the department, and a (~~(seller)~~)
12 licensee who appropriates or converts the tax collected to his or her
13 own use or to any use other than the payment of the tax to the extent
14 that the money required to be collected is not available for payment on
15 the due date as prescribed in this chapter is guilty of a felony, or
16 gross misdemeanor in accordance with the theft and anticipatory
17 provisions of Title 9A RCW. A person, partnership, corporation, or
18 corporate officer who fails to collect the tax imposed by this section,
19 or who has collected the tax and fails to pay it to the department in
20 the manner prescribed by this chapter, is personally liable to the
21 state for the amount of the tax.

22 NEW SECTION. Sec. 52. The tax under RCW 82.38.030, if not
23 previously imposed and paid, must be paid over to the department by
24 special fuel users and persons licensed under the international fuel
25 tax agreement or other fuel tax reciprocity agreements entered into
26 with the state of Washington, on the use of special fuel to operate
27 motor vehicles on the highways of this state, unless the use is exempt
28 from the tax under this chapter.

29 NEW SECTION. Sec. 53. (1) A position holder shall remit tax to
30 the department on special fuel removed from a terminal as provided in
31 RCW 82.38.030(2)(a). On a two-party exchange, or buy-sell agreement
32 between two suppliers, the receiving exchange partner or buyer becomes
33 the position holder, who shall remit the tax.

34 (2) A refiner shall remit tax to the department on special fuel
35 removed from a refinery as provided in RCW 82.38.030(2)(b).

36 (3) An importer shall remit tax to the department on special fuel
37 imported into this state as provided in RCW 82.38.030(2)(c).

1 (4) A blender shall remit tax to the department on the removal or
2 sale of blended special fuel as provided in RCW 82.38.030(2)(e).

3 (5) A dyed special fuel user shall remit tax to the department on
4 the use of dyed special fuel as provided in RCW 82.38.030(2)(f).

5 NEW SECTION. **Sec. 54.** A terminal operator is jointly and
6 severally liable for remitting the tax imposed under RCW 82.38.030(1)
7 if, at the time of removal:

8 (1) The position holder with respect to the special fuel is a
9 person other than the terminal operator and is not a licensee;

10 (2) The terminal operator is not a licensee;

11 (3) The position holder has an expired internal revenue service
12 notification certificate issued under chapter 26, C.F.R. Part 48; or

13 (4) The terminal operator had reason to believe that information on
14 the notification certificate was false.

15 NEW SECTION. **Sec. 55.** A terminal operator is jointly and
16 severally liable for remitting the tax imposed under RCW 82.38.030(1)
17 if, in connection with the removal of special fuel that is not dyed or
18 marked in accordance with internal revenue service requirements, the
19 terminal operator provides a person with a bill of lading, shipping
20 paper, or similar document indicating that the special fuel is dyed or
21 marked in accordance with internal revenue service requirements.

22 NEW SECTION. **Sec. 56.** A person may not operate or maintain a
23 motor vehicle on a public highway of this state with dyed special fuel
24 in the fuel supply tank unless the use is authorized by the Internal
25 Revenue Code and the person is the holder of an uncanceled dyed special
26 fuel user license issued to him or her by the department. The special
27 fuel tax set forth in RCW 82.38.030 is imposed on users of dyed special
28 fuel authorized by the Internal Revenue Code to operate on-highway
29 motor vehicles using dyed special fuel, unless the use is exempt from
30 the special fuel tax.

31 NEW SECTION. **Sec. 57.** (1) Special fuel that is dyed satisfies the
32 dyeing requirements of this chapter if it meets the dyeing requirements
33 of the internal revenue service, including, but not limited to,
34 requirements respecting type, dosage, and timing.

1 (2) Marking must meet the marking requirements of the internal
2 revenue service.

3 (3) As required by the internal revenue service, notice is required
4 with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL,
5 NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

6 (a) Provided by the terminal operator to a person who receives dyed
7 special fuel at a terminal rack of that terminal operator;

8 (b) Provided by a seller of dyed special fuel to its buyer if the
9 special fuel is located outside the bulk transfer-terminal system and
10 is not sold from a retail pump posted in accordance with the
11 requirements of this subsection; or

12 (c) Posted by a seller on a retail pump where it sells dyed special
13 fuel for use by its buyer.

14 **Sec. 58.** RCW 82.38.070 and 1990 c 250 s 83 are each amended to
15 read as follows:

16 A special fuel (~~((dealer shall be))~~) supplier is entitled(~~((, under~~
17 ~~rules and regulations prescribed by the department,))~~) to a credit of
18 the tax paid over to the department on those sales of special fuel for
19 which the (~~((dealer))~~) supplier has received no consideration from or on
20 behalf of the purchaser(~~((, which have been declared by the dealer to be~~
21 ~~worthless accounts receivable, and which have been claimed as bad debts~~
22 ~~for federal income tax purposes))~~). The amount of the tax (~~((refunded))~~)
23 credit shall not exceed the amount of tax imposed by this chapter on
24 such sales. If a (~~((refund))~~) credit has been granted under this
25 section, any amounts collected for application against the accounts on
26 which such a (~~((refund))~~) credit is based shall be reported (~~((with the~~
27 ~~first))~~) on a subsequent return filed after such collection, and the
28 amount of (~~((refund))~~) credit received by the (~~((dealer))~~) supplier based
29 upon the collected amount shall be returned to the department. In the
30 event the (~~((refund))~~) credit has not been paid, the amount of the
31 (~~((refund))~~) credit requested by the (~~((dealer))~~) supplier shall be
32 adjusted by the department to reflect the decrease in the amount on
33 which the claim is based. (~~((The department may require the dealer to~~
34 ~~submit periodical reports listing accounts which are delinquent for~~
35 ~~ninety days or more.))~~)

36 NEW SECTION. **Sec. 59.** A special fuel distributor, special fuel
37 importer, or special fuel blender, under rules adopted by the

1 department, is entitled to a refund of the tax paid on those sales of
2 special fuel for which no consideration has been received from or on
3 behalf of the purchaser and that have been declared to be worthless
4 accounts receivable. The amount of the tax refunded must not exceed
5 the amount of tax paid by the special fuel distributor, special fuel
6 importer, or special fuel blender paid under this chapter. If the
7 special fuel distributor, special fuel importer, or special fuel
8 blender subsequently collects any amount from the account declared
9 worthless, the amount collected shall be apportioned between the
10 charges for the fuel and tax thereon. The special fuel tax collected
11 must be returned to the department.

12 **Sec. 60.** RCW 82.38.080 and 1996 c 244 s 6 are each amended to read
13 as follows:

14 (1) There is exempted from the tax imposed by this chapter, the use
15 of fuel for:

16 ~~((1))~~ (a) Street and highway construction and maintenance
17 purposes in motor vehicles owned and operated by the state of
18 Washington, or any county or municipality;

19 ~~((2))~~ (b) Publicly owned fire fighting equipment;

20 ~~((3))~~ (c) Special mobile equipment as defined in RCW 46.04.552;

21 ~~((4))~~ (d) Power pumping units or other power take-off equipment
22 of any motor vehicle which is accurately measured by metering devices
23 that have been specifically approved by the department or which is
24 established by ~~((either))~~ any of the following formulae:

25 ~~((a))~~ (i) Pumping propane, or fuel or heating oils or milk picked
26 up from a farm or dairy farm storage tank by a power take-off unit on
27 a delivery truck, at ~~((the))~~ a rate ~~((of three-fourths of one gallon
28 for each one thousand gallons of fuel delivered or milk picked up))~~
29 determined by the department: PROVIDED, That claimant when presenting
30 his or her claim to the department in accordance with ~~((the provisions
31 of))~~ this chapter, shall provide to ~~((said))~~ the claim, invoices of
32 propane, or fuel or heating oil delivered, or such other appropriate
33 information as may be required by the department to substantiate his or
34 her claim; ~~((or~~

35 ~~(b))~~ (ii) Operating a power take-off unit on a cement mixer truck
36 or a load compactor on a garbage truck at the rate of twenty-five
37 percent of the total gallons of fuel used in such a truck; ~~((and))~~ or

1 ~~((e))~~ (iii) The department is authorized to establish by rule
2 additional formulae for determining fuel usage when operating other
3 types of equipment by means of power take-off units when direct
4 measurement of the fuel used is not feasible. The department is also
5 authorized to adopt rules regarding the usage of on board computers for
6 the production of records required by this chapter;

7 ~~((5))~~ (e) Motor vehicles owned and operated by the United States
8 government;

9 ~~((6))~~ (f) Heating purposes;

10 ~~((7))~~ (g) Moving a motor vehicle on a public highway between two
11 pieces of private property when said moving is incidental to the
12 primary use of the motor vehicle;

13 ~~((8))~~ (h) Transportation services for persons with special
14 transportation needs by a private, nonprofit transportation provider
15 regulated under chapter 81.66 RCW; ~~((and~~

16 ~~(9))~~ (i) Vehicle refrigeration units, mixing units, or other
17 equipment powered by separate motors from separate fuel tanks; and

18 (j) The operation of a motor vehicle as a part of or incidental to
19 logging operations upon a highway under federal jurisdiction within the
20 boundaries of a federal area if the federal government requires a fee
21 for the privilege of operating the motor vehicle upon the highway, the
22 proceeds of which are reserved for constructing or maintaining roads in
23 the federal area, or requires maintenance or construction work to be
24 performed on the highway for the privilege of operating the motor
25 vehicle on the highway.

26 (2) There is exempted from the tax imposed by this chapter the
27 removal or entry of special fuel under the following circumstances and
28 conditions:

29 (a) If it is the removal from a terminal or refinery of, or the
30 entry or sale of, a special fuel if all of the following apply:

31 (i) The person otherwise liable for the tax is a licensee other
32 than a dyed special fuel user or international fuel tax agreement
33 licensee;

34 (ii) For a removal from a terminal, the terminal is a licensed
35 terminal; and

36 (iii) The special fuel satisfies the dyeing and marking
37 requirements of this chapter;

1 (b) If it is an entry or removal from a terminal or refinery of
2 taxable special fuel transferred to a refinery or terminal and the
3 persons involved, including the terminal operator, are licensed; and

4 (c)(i) If it is a special fuel that, under contract of sale, is
5 shipped to a point outside this state by a supplier by means of any of
6 the following:

7 (A) Facilities operated by the supplier;

8 (B) Delivery by the supplier to a carrier, customs broker, or
9 forwarding agent, whether hired by the purchaser or not, for shipment
10 to the out-of-state point;

11 (C) Delivery by the supplier to a vessel clearing from port of this
12 state for a port outside this state and actually exported from this
13 state in the vessel.

14 (ii) For purposes of this subsection (2)(c):

15 (A) "Carrier" means a person or firm engaged in the business of
16 transporting for compensation property owned by other persons, and
17 includes both common and contract carriers; and

18 (B) "Forwarding agent" means a person or firm engaged in the
19 business of preparing property for shipment or arranging for its
20 shipment.

21 (3) Notwithstanding any provision of law to the contrary, every
22 urban passenger transportation system and carriers as defined by
23 chapters 81.68 and 81.70 RCW shall be exempt from the provisions of
24 this chapter requiring the payment of special fuel taxes. For the
25 purposes of this section "urban passenger transportation system" means
26 every transportation system, publicly or privately owned, having as its
27 principal source of revenue the income from transporting persons for
28 compensation by means of motor vehicles and/or trackless trolleys, each
29 having a seating capacity for over fifteen persons over prescribed
30 routes in such a manner that the routes of such motor vehicles and/or
31 trackless trolleys, either alone or in conjunction with routes of other
32 such motor vehicles and/or trackless trolleys subject to routing by the
33 same transportation system, shall not extend for a distance exceeding
34 twenty-five road miles beyond the corporate limits of the county in
35 which the original starting points of such motor vehicles are located:
36 PROVIDED, That no refunds or credits shall be granted on special fuel
37 used by any urban transportation vehicle or vehicle operated pursuant
38 to chapters 81.68 and 81.70 RCW on any trip where any portion of said

1 trip is more than twenty-five road miles beyond the corporate limits of
2 the county in which said trip originated.

3 **Sec. 61.** RCW 82.38.090 and 1995 c 20 s 13 are each amended to read
4 as follows:

5 (1) It shall be unlawful for any person to ~~((act as a special fuel~~
6 ~~dealer or a special fuel user))~~ engage in business in this state as any
7 of the following unless ~~((such))~~ the person is the holder of an
8 uncanceled ~~((special fuel dealer's or a special fuel user's))~~ license
9 issued to him or her by the department~~((-~~

10 ~~A special fuel dealer's license authorizes a person to deliver~~
11 ~~previously untaxed special fuel into the fuel supply tanks of motor~~
12 ~~vehicles, collect the special fuel tax on behalf of the state at the~~
13 ~~time of delivery, and remit the taxes collected to the state as~~
14 ~~provided herein. A licensed special fuel dealer may also deliver~~
15 ~~untaxed special fuel into bulk storage facilities of a licensed special~~
16 ~~fuel user or dealer without collecting the special fuel tax. Special~~
17 ~~fuel dealers, when making deliveries of special fuel into bulk storage~~
18 ~~to any person not holding a valid special fuel license, must collect~~
19 ~~the special fuel tax at time of delivery, unless the person to whom the~~
20 ~~delivery is made is specifically exempted from the tax as provided~~
21 ~~herein.~~

22 ~~A special fuel user's license authorizes a person to purchase~~
23 ~~special fuel into bulk storage for use in motor vehicles either on or~~
24 ~~off the public highways of this state without payment of the special~~
25 ~~fuel tax at time of purchase. Holders of special fuel licenses are all~~
26 ~~subject to the bonding, reporting, tax payment, and record keeping~~
27 ~~provisions of this chapter. All purchases of special fuel by a~~
28 ~~licensed special fuel user directly into the fuel supply tank of a~~
29 ~~motor vehicle are subject to the special fuel tax at time of purchase.~~
30 ~~Special authorization may be given to farmers, logging companies, and~~
31 ~~construction companies to purchase special fuel directly into the~~
32 ~~supply tanks of nonhighway equipment or into portable slip tanks for~~
33 ~~nonhighway use without payment of the special fuel tax.))~~ authorizing
34 the person to engage in that business:

35 (a) Special fuel supplier;

36 (b) Special fuel distributor;

37 (c) Special fuel exporter;

38 (d) Special fuel importer;

- 1 (e) Special fuel blender;
- 2 (f) Dyed special fuel user; or
- 3 (g) International fuel tax agreement licensee.

4 (2) A person engaged in more than one activity for which a license
5 is required must have a separate license classification for each
6 activity, but a special fuel supplier is not required to obtain a
7 separate license classification for any other activity for which a
8 license is required.

9 (3) Special fuel users operating motor vehicles in interstate
10 commerce having two axles and a gross vehicle weight or registered
11 gross vehicle weight not exceeding twenty-six thousand pounds are not
12 required to be licensed. Special fuel users operating motor vehicles
13 in interstate commerce having two axles and a gross vehicle weight or
14 registered gross vehicle weight exceeding twenty-six thousand pounds,
15 or having three or more axles regardless of weight, or a combination of
16 vehicles, when the combination exceeds twenty-six thousand pounds gross
17 vehicle weight, must comply with the licensing and reporting
18 requirements of this chapter. A copy of the license must be carried in
19 each motor vehicle entering this state from another state or province.

20 **Sec. 62.** RCW 82.38.100 and 1983 c 78 s 1 are each amended to read
21 as follows:

22 (1) Any special fuel user operating a motor vehicle into this state
23 for commercial purposes may make application for a trip permit ((in
24 lieu of a special fuel user's license required in RCW 82.38.090 and
25 82.38.120 which)) that shall be good for a period of three consecutive
26 days beginning and ending on the dates specified on the face of the
27 permit issued, and only for the vehicle for which it is issued.

28 (2) Every permit shall identify, as the department may require, the
29 vehicle for which it is issued and shall be completed in its entirety,
30 signed, and dated by the operator before operation of the vehicle on
31 the public highways of this state. Correction of data on the permit
32 such as dates, vehicle license number, or vehicle identification number
33 invalidates the permit. A violation of, or a failure to comply with,
34 this subsection is a gross misdemeanor.

35 (3) For each permit issued, there shall be collected a filing fee
36 of one dollar, an administrative fee of ten dollars, and an excise tax
37 of nine dollars. Such fees and tax shall be in lieu of the special
38 fuel tax otherwise assessable against the permit holder for importing

1 and using special fuel in a motor vehicle on the public highways of
2 this state and no report of mileage shall be required with respect to
3 such vehicle. Trip permits will not be issued if the applicant has
4 outstanding fuel taxes, penalties or interest owing to the state or has
5 had a special fuel license revoked for cause and the cause has not been
6 removed.

7 (4) Blank permits may be obtained from field offices of the
8 department of transportation, Washington state patrol, department of
9 licensing, or other agents appointed by the department. The department
10 may appoint county auditors or businesses as agents for the purpose of
11 selling trip permits to the public. County auditors or businesses so
12 appointed may retain the filing fee collected for each trip permit to
13 defray expenses incurred in handling and selling the permits.

14 (5) All fees and excise taxes collected by the department for trip
15 permits shall be credited and deposited in the same manner as the
16 special fuel tax collected under this chapter and shall not be subject
17 to exchange, refund, or credit.

18 **Sec. 63.** RCW 82.38.110 and 1996 c 104 s 8 are each amended to read
19 as follows:

20 (1) Application for a (~~special fuel dealer's license or a special~~
21 ~~fuel user's~~) license issued under this chapter shall be made to the
22 department. The application shall be filed upon a form prepared and
23 furnished by the department and shall contain such information as the
24 department deems necessary.

25 (2) Every application for a special fuel (~~dealer's~~) license,
26 other than an application for a dyed special fuel user or international
27 fuel tax agreement license, must contain the following information to
28 the extent it applies to the applicant:

29 ((+1)) (a) Proof as the department ((may)) shall require
30 concerning the applicant's identity, including but not limited to his
31 or her fingerprints or those of the officers of a corporation making
32 the application;

33 ((+2)) (b) The applicant's form and place of organization
34 including proof that the individual, partnership, or corporation is
35 licensed to do business in this state;

36 ((+3)) (c) The qualification and business history of the applicant
37 and any partner, officer, or director;

1 (~~(4)~~) (d) The applicant's financial condition or history
2 including a bank reference and whether the applicant or any partner,
3 officer, or director has ever been adjudged bankrupt or has an
4 unsatisfied judgment in a federal or state court;

5 (~~(5)~~) (e) Whether the applicant has been adjudged guilty of a
6 crime that directly relates to the business for which the license is
7 sought and the time elapsed since the conviction is less than ten
8 years, or has suffered a judgment within the preceding five years in a
9 civil action involving fraud, misrepresentation, or conversion and in
10 the case of a corporation or partnership, all directors, officers, or
11 partners.

12 (3) An applicant for a license as a special fuel importer must list
13 on the application each state, province, or country from which the
14 applicant intends to import fuel and, if required by the state,
15 province, or country listed, must be licensed or registered for special
16 fuel tax purposes in that state, province, or country.

17 (4) An applicant for a license as a special fuel exporter must list
18 on the application each state, province, or country to which the
19 exporter intends to export special fuel received in this state by means
20 of a transfer outside the bulk transfer-terminal system and, if
21 required by the state, province, or country listed, must be licensed or
22 registered for special fuel tax purposes in that state, province, or
23 country.

24 (5) An applicant for a license as a special fuel supplier must have
25 a federal certificate of registry that is issued under the Internal
26 Revenue Code and authorizes the applicant to enter into federal tax-
27 free transactions on special fuel in the terminal transfer system.

28 (6) After receipt of an application for a license, the director
29 (~~may~~) shall conduct an investigation to determine whether the facts
30 set forth are true. The director (~~may~~) shall require a fingerprint
31 record check of the applicant through the Washington state patrol
32 criminal identification system and the federal bureau of investigation
33 before issuance of a license. The results of the background
34 investigation including criminal history information may be released to
35 authorized department personnel as the director deems necessary. The
36 department shall charge a license holder or license applicant a fee of
37 fifty dollars for each background investigation conducted.

1 (7) An applicant who makes a false statement of a material fact on
2 the application may be prosecuted for false swearing as defined by RCW
3 9A.72.040.

4 (~~(No)~~) (8) A special fuel (~~(dealer's)~~) license may not be issued to
5 any person or continued in force unless such person has furnished bond,
6 as defined in RCW 82.38.020, in such form as the department may
7 require, to secure his or her compliance with this chapter, and the
8 payment of any and all taxes, interest, and penalties due and to become
9 due hereunder. The requirement of furnishing a bond (~~(shall)~~) may be
10 waived for special fuel (~~(dealers)~~) distributors who only deliver
11 special fuel into the fuel tanks of marine vessels, for dyed special
12 fuel users and for persons issued licenses under the international fuel
13 tax agreement.

14 (9) The department may require a (~~(special fuel user)~~) licensee to
15 post a bond if the (~~(special fuel user)~~) licensee, after having been
16 licensed, has failed to file timely reports or has failed to remit
17 taxes due, or when an investigation or audit indicates problems severe
18 enough that the department, in its discretion, determines that a bond
19 is required to protect the interests of the state. The department may
20 also adopt rules prescribing conditions that, in the department's
21 discretion, require a bond to protect the interests of the state.

22 (10) The total amount of the bond or bonds required of any
23 (~~(special fuel dealer or special fuel user)~~) licensee shall be
24 equivalent to three times the estimated monthly fuel tax, determined in
25 such manner as the department may deem proper: PROVIDED, That those
26 (~~(special fuel dealers)~~) licensees having held a special fuel license
27 for five or more years without having said license suspended or revoked
28 by the department shall be permitted to reduce the amount of their bond
29 to twice the estimated monthly tax liability: PROVIDED FURTHER, That
30 the total amount of the bond or bonds shall never be less than five
31 hundred dollars nor more than (~~(fifty)~~) one hundred thousand dollars.

32 (11) An application for a dyed special fuel user license must be
33 made to the department. The application must be filed upon a form
34 prescribed by the department and contain such information as the
35 department deems necessary.

36 (12) An application for an international fuel tax agreement license
37 must be made to the department. The application must be filed upon a
38 form prescribed by the department and contain such information as the
39 department may require.

1 **Sec. 64.** RCW 82.38.120 and 1996 c 104 s 9 are each amended to read
2 as follows:

3 Upon receipt and approval of an application and bond, if required,
4 the department shall issue (~~((to the applicant))~~) a license to (~~((act as~~
5 ~~a special fuel dealer or a special fuel user))~~) the applicant. However,
6 the department may refuse to issue a (~~((special fuel dealer's))~~) license
7 (~~((or a special fuel user's license))~~) to any person:

8 (1) Who formerly held (~~((either type of))~~) a license issued under
9 chapter 82.36 or 82.42 RCW or this chapter which, prior to the time of
10 filing for application, has been revoked for cause;

11 (2) Who is a subterfuge for the real party in interest whose
12 license prior to the time of filing for application, has been revoked
13 for cause;

14 (3) Who, as an individual licensee, or officer, director, owner, or
15 managing employee of a nonindividual licensee, has had a special fuel
16 license revoked for cause;

17 (4) Who has an unsatisfied debt to the state assessed under either
18 chapter 82.36, 82.38, (~~((or))~~) 46.87, or 82.42 RCW;

19 (5) Who formerly held as an individual, officer, director, owner,
20 managing employee of a nonindividual licensee, or subterfuge for a real
21 party in interest, a license issued by the federal government or a
22 state that allowed a person to buy or sell untaxed motor vehicle or
23 special fuel, which license, before the time of filing for application,
24 has been revoked for cause;

25 (6) Who pled guilty to or was convicted as an individual, officer,
26 director, owner, or managing employee of a nonindividual licensee in
27 this or any other state or in any federal jurisdiction of a gross
28 misdemeanor or felony crime directly related to the business or has
29 been subject to a civil judgment involving fraud, misrepresentation,
30 conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

31 (7) Who misrepresented or concealed a material fact in obtaining a
32 license or in reinstatement thereof;

33 (8) Who violated a statute or administrative rule regulating fuel
34 taxation or distribution;

35 (9) Who failed to cooperate with the department's investigations
36 by:

37 (a) Not furnishing papers or documents;

38 (b) Not furnishing in writing a full and complete explanation
39 regarding a matter under investigation by the department; or

1 (c) Not responding to subpoenas issued by the department, whether
2 or not the recipient of the subpoena is the subject of the proceeding;
3 (10) Who failed to comply with an order issued by the director; or
4 (11) Upon other sufficient cause being shown.

5 Before such refusal, the department shall grant the applicant a
6 hearing and shall grant the applicant at least twenty days written
7 notice of the time and place thereof.

8 The department shall determine from the information shown in the
9 application or other investigation the kind and class of license to be
10 issued. For the purpose of considering any application for a special
11 fuel ((dealer's)) license, the department may inspect, cause an
12 inspection, investigate, or cause an investigation of the records of
13 this or any other state or of the federal government to ascertain the
14 veracity of the information on the application form and the applicant's
15 criminal and licensing history.

16 All licenses shall be posted in a conspicuous place or kept
17 available for inspection at the principal place of business of the
18 owner thereof. License holders shall reproduce the license by
19 photostat or other method and keep a copy on display for ready
20 inspection at each additional place of business or other place of
21 storage from which special fuel is sold, delivered or used and in each
22 motor vehicle used by the license holder to transport special fuel
23 purchased by him or her for resale, delivery or use. ((Every licensed
24 special fuel user operating a motor vehicle registered in a
25 jurisdiction other than this state shall reproduce the license and
26 carry a photocopy thereof with each motor vehicle being operated upon
27 the highways of this state.

28 A special fuel dealer may use special fuel in motor vehicles owned
29 or operated by the dealer without securing a license as a special fuel
30 user but the dealer is subject to all other conditions, requirements,
31 and liabilities imposed herein upon a special fuel user.))

32 Each special fuel ((dealer's license and special fuel user's))
33 license shall be valid until the expiration date if shown on the
34 license, or until suspended or revoked for cause or otherwise canceled.

35 No special fuel ((dealer's license or special fuel user's)) license
36 shall be transferable.

37 **Sec. 65.** RCW 82.38.130 and 1994 c 262 s 24 are each amended to
38 read as follows:

1 The department may revoke the license of any (~~special fuel dealer,~~
2 ~~or special fuel user~~) licensee for any of the grounds constituting
3 cause for denial of a license set forth in RCW 82.38.120 or for other
4 reasonable cause. Before revoking such license the department shall
5 notify the licensee to show cause within twenty days of the date of the
6 notice why the license should not be revoked: PROVIDED, That at any
7 time prior to and pending such hearing the department may, in the
8 exercise of reasonable discretion, suspend such license.

9 The department shall cancel any (~~license to act as a~~) special
10 fuel (~~dealer, or a special fuel user~~) license immediately upon
11 surrender thereof by the holder.

12 Any surety on a bond furnished by a (~~special fuel dealer or~~
13 ~~special fuel user~~) licensee as provided (~~herein~~) in this chapter
14 shall be released and discharged from any and all liability to the
15 state accruing on such bond after the expiration of forty-five days
16 from the date which such surety shall have lodged with the department
17 a written request to be released and discharged, but this provision
18 shall not operate to relieve, release, or discharge the surety from any
19 liability already accrued or which shall accrue before the expiration
20 of the forty-five day period. The department shall promptly, upon
21 receiving any such request, notify the (~~special fuel dealer or special~~
22 ~~fuel user~~) licensee who furnished the bond, and unless the (~~special~~
23 ~~fuel dealer or special fuel user shall~~) licensee, on or before the
24 expiration of the forty-five day period, files a new bond, in
25 accordance with (~~the requirements of~~) this section, (~~or make a~~
26 ~~deposit in lieu thereof as provided in RCW 82.38.020(11),~~) the
27 department forthwith shall cancel the special fuel dealer's or special
28 fuel user's license.

29 The department may require a (~~special fuel dealer or special fuel~~
30 ~~user to give a~~) new or additional surety bond (~~or to deposit~~
31 ~~additional securities~~) of the character specified in RCW
32 82.38.020(~~(11)~~) (3) if, in its opinion, the security of the surety
33 bond therefor filed by such (~~special fuel dealer or special fuel user,~~
34 ~~or the market value of the properties deposited as security by such~~
35 ~~special fuel dealer or special fuel user~~) licensee, shall become
36 impaired or inadequate. Upon failure of the (~~special fuel dealer or~~
37 ~~special fuel user~~) licensee to give such new or additional surety bond
38 (~~or to deposit additional securities~~) within forty-five days after
39 being requested to do so by the department, or after he or she shall

1 fail or refuse to file reports and remit or pay taxes at the intervals
2 fixed by the department, the department forthwith shall cancel his or
3 her license.

4 **Sec. 66.** RCW 82.38.140 and 1996 c 104 s 10 and 1996 c 90 s 2 are
5 each reenacted and amended to read as follows:

6 (1) Every (~~special fuel dealer, special fuel user,~~) licensee and
7 every person importing, manufacturing, refining, dealing in,
8 transporting, blending, or storing special fuel in this state shall
9 keep for a period of not less than five years open to inspection at all
10 times during the business hours of the day to the department or its
11 authorized representatives, a complete record of all special fuel
12 purchased or received and all of such products sold, delivered, or used
13 by them. Such records shall show:

14 (a) The date of each receipt;

15 (b) The name and address of the person from whom purchased or
16 received;

17 (c) The number of gallons received at each place of business or
18 place of storage in the state of Washington;

19 (d) The date of each sale or delivery;

20 (e) The number of gallons sold, delivered, or used for taxable
21 purposes;

22 (f) The number of gallons sold, delivered, or used for any purpose
23 not subject to the tax imposed (~~herein~~) in this chapter;

24 (g) The name, address, and special fuel license number of the
25 purchaser if the special fuel tax is not collected on the sale or
26 delivery;

27 (h) The inventories of special fuel on hand at each place of
28 business at the end of each month.

29 (2)(a) All (~~special fuel users using special fuel~~) international
30 fuel tax agreement licensees and dyed special fuel users authorized to
31 use dyed special fuel on highway in vehicles licensed for highway
32 operation shall maintain detailed mileage records on an individual
33 vehicle basis.

34 (b) Such operating records shall show both on-highway and off-
35 highway usage of special fuel on a daily basis for each vehicle.

36 (c) In the absence of operating records that show both on-highway
37 and off-highway usage of special fuel on a daily basis for each
38 vehicle, fuel consumption must be computed under RCW 82.38.060.

1 (3) ~~((Persons using special fuel for heating purposes only are not~~
2 ~~required to maintain records of fuel usage.~~

3 (4) ~~Invoices shall be prepared for sales and deliveries of special~~
4 ~~fuel in the manner and containing such information as may be prescribed~~
5 ~~by the department.~~

6 Every special fuel dealer or special fuel user making such sales or
7 deliveries of special fuel and every person so receiving and purchasing
8 special fuel must each retain one copy of each such invoice as part of
9 the dealer's permanent records for the time and purposes above
10 provided.

11 (5) Every special fuel user shall keep, in addition to the dealer's
12 records of deliveries into motor vehicles, a complete record as
13 prescribed by the department of the total gallons of special fuel used
14 for other purposes during each month and the purposes for which said
15 special fuel was used.

16 (6) ~~Subsections (1)(f), (2)(b), and (5) of this section do not~~
17 ~~apply to special fuel users when the special fuel is used off highway~~
18 ~~in farming, construction, or logging operations. Upon filing a special~~
19 ~~fuel user tax report, every such special fuel user shall certify and~~
20 ~~bear the burden of proof as to the number of gallons of special fuel~~
21 ~~used off highway.))~~ The department may require a person other than a
22 licensee engaged in the business of selling, purchasing, distributing,
23 storing, transporting, or delivering special fuel to submit periodic
24 reports to the department regarding the disposition of the fuel. The
25 reports must be on forms prescribed by the department and must contain
26 such information as the department may require.

27 (4) Every person operating any conveyance for the purpose of
28 hauling, transporting, or delivering special fuel in bulk shall have
29 and possess during the entire time the person is hauling special fuel,
30 an invoice, bill of sale, or other statement showing the name, address,
31 and license number of the seller or consigner, the destination, name,
32 and address of the purchaser or consignee, license number, if
33 applicable, and the number of gallons. The person hauling such special
34 fuel shall at the request of any law enforcement officer or authorized
35 representative of the department, or other person authorized by law to
36 inquire into, or investigate those types of matters, produce for
37 inspection such invoice, bill of sale, or other statement and shall
38 permit such official to inspect and gauge the contents of the vehicle.

1 **Sec. 67.** RCW 82.38.150 and 1996 c 104 s 11 are each amended to
2 read as follows:

3 For the purpose of determining the amount of liability for the tax
4 herein imposed, and to periodically update license information, each
5 ~~((special fuel dealer and each)) licensee, other than a special fuel~~
6 distributor, an international fuel tax agreement licensee, or a dyed
7 special fuel user, shall file monthly tax reports with the department,
8 on forms prescribed by the department. ~~((Special fuel dealers shall~~
9 ~~file the reports at the intervals as shown in the following schedule:~~

10 Estimated Yearly	
11 Tax Liability	11 Reporting Frequency
12 \$ 0 -- \$100	12 Yearly
13 \$101 -- 250	13 Semi-yearly
14 \$251 -- 499	14 Quarterly
15 \$500 and over	15 Monthly))

16 Dyed special fuel users whose estimated yearly tax liability is two
17 hundred fifty dollars or less, shall file a report yearly, and dyed
18 special fuel users whose estimated yearly tax liability is more than
19 two hundred fifty dollars, shall file reports quarterly. Special fuel
20 users licensed under the international fuel tax agreement shall file
21 reports quarterly. Special fuel distributors subject to the pollution
22 liability insurance agency fee and reporting requirements shall remit
23 pollution liability insurance agency returns and any associated payment
24 due to the department annually.

25 The department shall establish the reporting frequency for each
26 applicant at the time the special fuel license is issued. If it
27 becomes apparent that any ~~((special fuel)) licensee is not reporting in~~
28 accordance with the above schedule, the department shall change the
29 licensee's reporting frequency by giving thirty days' notice to the
30 licensee by mail to the licensee's address of record. A report shall
31 be filed with the department even though no special fuel was used, or
32 tax is due, for the reporting period. Each tax report shall contain a
33 declaration by the person making the same, to the effect that the
34 statements contained therein are true and are made under penalties of
35 perjury, which declaration shall have the same force and effect as a
36 verification of the report and is in lieu of such verification. The
37 report shall show such information as the department may reasonably
38 require for the proper administration and enforcement of this chapter.

1 For counties within which an additional excise tax on special fuel has
2 been levied by that jurisdiction under RCW 82.80.010, the report must
3 show the quantities of special fuel sold, distributed, or withdrawn
4 from bulk storage by the reporting dealer or user within the county's
5 boundaries and the tax liability from its levy. (~~The special fuel~~
6 ~~dealer or special fuel user~~) A licensee shall file ~~((the))~~ a tax
7 report on or before the twenty-fifth day of the next succeeding
8 calendar month following the period to which it relates.

9 Subject to the written approval of the department, tax reports may
10 cover a period ending on a day other than the last day of the calendar
11 month. Taxpayers granted approval to file reports in this manner will
12 file such reports on or before the twenty-fifth day following the end
13 of the reporting period. No change to this reporting period will be
14 made without the written authorization of the department.

15 If the final filing date falls on a Saturday, Sunday, or legal
16 holiday the next secular or business day shall be the final filing
17 date. Such reports shall be considered filed or received on the date
18 shown by the post office cancellation mark stamped upon an envelope
19 containing such report properly addressed to the department, or on the
20 date it was mailed if proof satisfactory to the department is available
21 to establish the date it was mailed.

22 The department, if it deems it necessary in order to insure payment
23 of the tax imposed by this chapter, or to facilitate the administration
24 of this chapter, has the authority to require the filing of reports and
25 tax remittances at shorter intervals than one month if, in its opinion,
26 an existing bond has become insufficient.

27 (~~The department may permit any special fuel user whose sole use of~~
28 ~~special fuel is in motor vehicles or equipment exempt from tax as~~
29 ~~provided in RCW 82.38.075 and 82.38.080 (1), (2), (3), (8), and (9), in~~
30 ~~lieu of the reports required in this section, to submit reports~~
31 ~~annually or as requested by the department, in such form as the~~
32 ~~department may require.~~

33 ~~A special fuel user whose sole use of special fuel is for purposes~~
34 ~~other than the propulsion of motor vehicles upon the public highways of~~
35 ~~this state shall not be required to submit the reports required in this~~
36 ~~section.))~~

37 **Sec. 68.** RCW 82.38.160 and 1987 c 174 s 5 are each amended to read
38 as follows:

1 (1) The tax imposed by this chapter shall be computed (~~(as follows:~~
2 ~~(a) With respect to special fuel upon which the tax has been collected~~
3 ~~by the seller thereof as a special fuel dealer,~~) by multiplying the
4 tax rate per gallon provided in this chapter by the number of gallons
5 of special fuel (~~(delivered)~~) subject to the special fuel tax(~~(;~~~~(b)~~
6 ~~with respect to special fuel on which the tax has not been paid to a~~
7 ~~special fuel dealer in this state and which has been consumed by the~~
8 ~~purchaser thereof as a special fuel user,~~ by multiplying the tax rate
9 per gallon provided in this chapter by the number of gallons of special
10 fuel consumed by him in the propulsion of a motor vehicle on the
11 highways of this state)).

12 (2) A special fuel distributor shall remit tax on special fuel
13 purchased from a special fuel supplier, and due to the state for that
14 reporting period, to the special fuel supplier.

15 (3) At the election of the distributor, the payment of the special
16 fuel tax owed on special fuel purchased from a supplier shall be
17 remitted to the supplier on terms agreed upon between the distributor
18 and the supplier or no later than two business days before the last
19 business day of the following month. This election shall be subject to
20 a condition that the distributor's remittances of all amounts of
21 special fuel tax due to the supplier shall be paid by electronic funds
22 transfer. The distributor's election may be terminated by the supplier
23 if the distributor does not make timely payments to the supplier as
24 required by this section. This section shall not apply if the
25 distributor is required by the supplier to pay cash or cash equivalent
26 for special fuel purchases.

27 (4) Except as provided in subsection (~~(3)~~) (5) of this section,
28 the tax return shall be accompanied by a remittance payable to the
29 state treasurer covering the tax (~~(moneys collected by the special fuel~~
30 ~~dealer or the)~~) amount determined to be due (~~(hereunder by licensed~~
31 ~~users of special fuels during)~~) for the (~~(preceding)~~) reporting period.

32 (~~(3)~~) (5) If the tax is paid by electronic funds transfer (~~(and~~
33 ~~the reporting period ends on the last day of a calendar month)~~), the
34 tax shall be paid on or before the (~~(state business day immediately~~
35 ~~preceding the last state business day of the month following the end~~
36 ~~of)~~) tenth calendar day of the month that is the second month
37 immediately following the reporting period. When the reporting period
38 is May, the tax shall be paid on the last state business day of June.
39 If the tax is paid by electronic funds transfer and the reporting

1 period ends on a day other than the last day of a calendar month as
2 provided in RCW 82.38.150, the tax shall be paid on or before (~~the~~
3 ~~state business day immediately preceding~~) the last state business day
4 of the thirty-day period following the end of the reporting period.

5 (~~(4)~~) (6) The tax shall be paid by electronic funds transfer
6 whenever the amount due is fifty thousand dollars or more.

7 NEW SECTION. **Sec. 69.** A special fuel supplier shall, no later
8 than the twentieth day or next business day after the special fuel tax
9 is due from the special fuel distributor under RCW 82.38.160(2), notify
10 the department of the failure of a special fuel distributor to pay the
11 full amount of the tax owed.

12 Upon notification and submission of satisfactory evidence by a
13 special fuel supplier that a special fuel distributor has failed to
14 comply with RCW 82.38.160(2), the department may suspend the license of
15 the special fuel distributor.

16 Upon the suspension, the department shall immediately notify all
17 special fuel suppliers that the authority of the special fuel
18 distributor to purchase tax-deferred special fuel has been suspended
19 and all subsequent purchases of special fuel by the special fuel
20 distributor must be tax-paid at the time of removal.

21 If, after notification by the department, a special fuel supplier
22 continues to sell tax-deferred special fuel to a special fuel
23 distributor whose license is suspended, the special fuel supplier's
24 license is subject to revocation or suspension under RCW 82.38.130.
25 Furthermore, if notified of a license suspension, a special fuel
26 supplier is liable for any unpaid special fuel tax owed on special fuel
27 sold to a suspended special fuel distributor.

28 **Sec. 70.** RCW 82.38.170 and 1996 c 104 s 12 are each amended to
29 read as follows:

30 (1) If any (~~special fuel dealer or special fuel user~~) licensee
31 fails to pay any taxes collected or due the state of Washington (~~by~~
32 ~~said dealer or user~~) within the time prescribed by RCW 82.38.150 and
33 82.38.160, (~~said dealer or user~~) the licensee shall pay in addition
34 to such tax a penalty of ten percent of the amount thereof.

35 (2) If it be determined by the department that the tax reported by
36 any (~~special fuel dealer or special fuel user~~) licensee is deficient
37 it may proceed to assess the deficiency on the basis of information

1 available to it and there shall be added to this deficiency a penalty
2 of ten percent of the amount of the deficiency.

3 (3) If any (~~special fuel dealer or special fuel user~~) licensee,
4 whether or not he or she is licensed as such, fails, neglects, or
5 refuses to file a special fuel tax report required under this chapter,
6 the department may, on the basis of information available to it,
7 determine the tax liability of the (~~special fuel dealer or the special~~
8 ~~fuel user~~) licensee for the period during which no report was filed,
9 and to the tax as thus determined, the department shall add the penalty
10 and interest provided in subsection (2) of this section. An assessment
11 made by the department pursuant to this subsection or to subsection (2)
12 of this section shall be presumed to be correct, and in any case where
13 the validity of the assessment is drawn in question, the burden shall
14 be on the person who challenges the assessment to establish by a fair
15 preponderance of the evidence that it is erroneous or excessive as the
16 case may be.

17 (4) If any (~~special fuel dealer or special fuel user shall~~)
18 licensee establishes by a fair preponderance of evidence that his or
19 her failure to file a report or pay the proper amount of tax within the
20 time prescribed was due to reasonable cause and was not intentional or
21 willful, the department may waive the penalty prescribed in subsections
22 (1), (2), and (3) of this section.

23 (5) If any (~~special fuel dealer or special fuel user shall~~)
24 licensee files a false or fraudulent report with intent to evade the
25 tax imposed by this chapter, there shall be added to the amount of
26 deficiency determined by the department a penalty equal to twenty-five
27 percent of the deficiency, in addition to the penalty provided in
28 subsection (2) of this section and all other penalties prescribed by
29 law.

30 (6) Any special fuel tax, penalties, and interest payable under
31 this chapter shall bear interest at the rate of one percent per month,
32 or fraction thereof, from the first day of the calendar month after the
33 amount or any portion thereof should have been paid until the date of
34 payment: PROVIDED, That the department may waive the interest when it
35 determines that the cost of processing the collection of the interest
36 exceeds the amount of interest due.

37 (7) Except in the case of violations of filing a false or
38 fraudulent report, if the department deems mitigation of penalties and
39 interest to be reasonable and in the best interests of carrying out the

1 purpose of this chapter, it may mitigate such assessments upon whatever
2 terms the department deems proper, giving consideration to the degree
3 and extent of the lack of records and reporting errors. The department
4 may ascertain the facts regarding recordkeeping and payment penalties
5 in lieu of more elaborate proceedings under this chapter.

6 (8) Except in the case of a fraudulent report or of neglect or
7 refusal to make a report, every deficiency shall be assessed under
8 subsection (2) of this section within five years from the twenty-fifth
9 day of the next succeeding calendar month following the reporting
10 period for which the amount is proposed to be determined or within five
11 years after the return is filed, whichever period expires the later.

12 (9) Any (~~special fuel dealer or special fuel user~~) licensee
13 against whom an assessment is made under the provisions of subsections
14 (2) or (3) of this section may petition for a reassessment thereof
15 within thirty days after service upon the (~~special fuel dealer or~~
16 ~~special fuel user~~) licensee of notice thereof. If such petition is
17 not filed within such thirty day period, the amount of the assessment
18 becomes final at the expiration thereof.

19 If a petition for reassessment is filed within the thirty day
20 period, the department shall reconsider the assessment and, if the
21 (~~special fuel dealer or special fuel user~~) licensee has so requested
22 in his or her petition, shall grant such (~~special fuel dealer or~~
23 ~~special fuel user~~) licensee an oral hearing and give the (~~special~~
24 ~~fuel dealer or special fuel user~~) licensee ten days' notice of the
25 time and place thereof. The department may continue the hearing from
26 time to time. The decision of the department upon a petition for
27 reassessment shall become final thirty days after service upon the
28 (~~special fuel dealer or special fuel user~~) licensee of notice
29 thereof.

30 Every assessment made by the department shall become due and
31 payable at the time it becomes final and if not paid to the department
32 when due and payable, there shall be added thereto a penalty of ten
33 percent of the amount of the tax.

34 (10) Any notice of assessment required by this section shall be
35 served personally or by certified or registered mail; if by mail,
36 service shall be made by depositing such notice in the United States
37 mail, postage prepaid addressed to the (~~special fuel dealer or special~~
38 ~~fuel user~~) licensee at his or her address as the same appears in the
39 records of the department.

1 (11) Any licensee who has had (~~either their~~) the licensee's
2 special fuel (user) license (or special fuel dealer license, or
3 both,) revoked shall pay a one hundred dollar penalty prior to the
4 issuance of a new license.

5 (12) Any person who, upon audit or investigation by the department,
6 is found to have not paid special fuel taxes as required by this
7 chapter shall be subject to cancellation of all vehicle registrations
8 for vehicles utilizing special fuel as a means of propulsion. Any
9 unexpired Washington tonnage on the vehicles in question may be
10 transferred to a purchaser of the vehicles upon application to the
11 department who shall hold such tonnage in its custody until a sale of
12 the vehicle is made or the tonnage has expired.

13 (13) Unless expressly authorized by the Internal Revenue Code and
14 this chapter, a person using dyed special fuel in the propulsion of a
15 motor vehicle upon the highways of this state is subject to a civil
16 penalty of ten dollars for each gallon of dyed special fuel placed into
17 the supply tank of the motor vehicle, or one thousand dollars,
18 whichever is greater. The civil penalty collected as a result of this
19 subsection must be deposited in the motor vehicle fund. The penalties
20 must be collected and administered under this chapter.

21 (14) For the purposes of enforcement of this section, the
22 Washington state patrol or other commercial vehicle safety alliance-
23 certified officers may inspect, collect, and secure samples of special
24 fuel used in the propulsion of a vehicle operated upon the highways of
25 this state to detect the presence of dye or other chemical compounds.

26 (15) The Washington state patrol shall, by January 1, 1999, develop
27 and implement procedures for collection, analysis, and storage of fuel
28 samples collected under this chapter.

29 (16) RCW 43.05.110 does not apply to the civil penalties imposed
30 under subsection (13) of this section.

31 **Sec. 71.** RCW 82.38.180 and 1972 ex.s. c 138 s 4 are each amended
32 to read as follows:

33 Any person who has paid a special fuel tax either directly or to
34 the vendor from whom it was purchased may file a claim with the
35 department for a refund of the tax so paid and shall be reimbursed and
36 repaid the amount of:

1 (1) Any taxes previously paid on special fuel used for purposes
2 other than for the propulsion of motor vehicles upon the public
3 highways in this state.

4 (2) Any taxes previously paid on special fuel exported for use
5 outside of this state. Special fuel carried from this state in the
6 fuel tank of a motor vehicle is deemed to be exported from this state.
7 Special fuel distributed to a federally recognized Indian tribal
8 reservation located within the state of Washington is not considered
9 exported outside this state.

10 (3) Any tax, penalty, or interest erroneously or illegally
11 collected or paid.

12 (4) Any taxes previously paid on all special fuel which is lost or
13 destroyed, while applicant shall be the owner thereof, through fire,
14 lightning, flood, wind storm, or explosion.

15 (5) Any taxes previously paid on all special fuel of five hundred
16 gallons or more which is lost or destroyed while applicant shall be the
17 owner thereof, through leakage or other casualty except evaporation,
18 shrinkage, or unknown causes.

19 (6) Any taxes previously paid on special fuel that is inadvertently
20 mixed with dyed special fuel.

21 Recovery for such loss or destruction under either subsection (4)
22 ~~((or))~~, (5), or (6) of this section must be susceptible to positive
23 proof thereby enabling the department to conduct such investigation and
24 require such information as they may deem necessary. In the event that
25 the department is not satisfied that the fuel was lost ~~((or))~~,
26 destroyed, or contaminated as claimed because information or proof as
27 required hereunder is not sufficient to substantiate the accuracy of
28 the claim, they may deem such as sufficient cause to deny all right
29 relating to the refund or credit for the excise tax paid on special
30 fuel alleged to be lost or destroyed.

31 No refund or claim for credit shall be approved by the department
32 unless the gallons of special fuel claimed as nontaxable satisfy the
33 conditions specifically set forth in this section and the nontaxable
34 event or use occurred during the period covered by the refund claim.
35 Refunds or claims for credit by sellers or users of special fuel shall
36 not be allowed for anticipated nontaxable use or events.

37 NEW SECTION. Sec. 72. (1) Upon application, the department may
38 give special authorization to farmers, logging companies, and

1 construction companies to purchase nondyed special fuel directly into
2 the supply tanks of nonhighway equipment or into portable slip tanks
3 for nonhighway use without payment of the special fuel tax. Purchases
4 of this nondyed special fuel must be made at a card lock facility owned
5 and operated by a special fuel distributor who is required to pay the
6 special fuel tax on nondyed special fuel delivered to the card lock
7 facility and has elected to sell the special fuel in this manner. The
8 election is solely at the discretion of the special fuel distributor
9 and must be approved by the department.

10 (2) A special fuel distributor who has paid the special fuel tax on
11 nondyed special fuel purchased by a holder of a special authorization
12 may file a claim for refund of the special fuel tax paid. A claim for
13 refund of the special fuel tax paid under this section is allowed only
14 if all the following apply:

15 (a) Special fuel tax was paid by the distributor on the nondyed
16 special fuel to which the claim relates and the claim is supported by
17 an invoice or invoices showing such payment;

18 (b) The special fuel distributor sold the special fuel to a holder
19 of a valid special authorization issued by the department;

20 (c) The claim contains the name and special authorization number of
21 each purchaser and the number of gallons sold to the purchaser;

22 (d) The claim contains a statement that the special fuel
23 distributor has not included the amount of the tax in the sale price of
24 the nondyed special fuel and has not collected the special fuel tax
25 from the purchaser; and

26 (e) The claim contains a statement that the special fuel covered by
27 the claim did not contain visible evidence of dye.

28 (3) Each claim for refund under this section must be made on a form
29 prescribed by the department and must be for a period of not less than
30 one week.

31 (4) The department may terminate the election of a special fuel
32 distributor if the special fuel distributor fails to comply with this
33 section.

34 (5) The department shall require a holder of a special
35 authorization to submit a request at least once every two years for
36 renewal of the special authorization upon forms supplied by the
37 department. The department shall prescribe the information to be
38 submitted by the special authorization holder and shall determine
39 whether the special authorization shall continue.

1 (6) For any special fuel purchased under this special
2 authorization, a special authorization holder shall retain records
3 required under RCW 82.38.190 for refund submittals for three years
4 following the purchase date of the fuel.

5 (7) Notwithstanding the special provisions provided under this
6 section, the special authorization holder is subject to all provisions
7 of this chapter that apply to refund claims.

8 NEW SECTION. **Sec. 73.** (1) Upon application, the department may
9 give special authorization to interstate trucking companies licensed by
10 the state under the international fuel tax agreement to purchase
11 nondyed special fuel directly into the supply tanks of trucks engaged
12 in interstate commerce or into portable slip tanks for use in trucks
13 engaged in interstate commerce without payment of the special fuel tax.
14 Purchases of this nondyed special fuel must be made at a card lock
15 facility owned and operated by a special fuel distributor who is
16 required to pay the special fuel tax on nondyed special fuel delivered
17 to the card lock facility and has elected to sell the special fuel in
18 this manner. The election is solely at the discretion of the special
19 fuel distributor and must be approved by the department.

20 (2) A special fuel distributor who has paid the special fuel tax on
21 nondyed special fuel purchased by a holder of a special authorization
22 may file a claim for refund of the special fuel tax paid. A claim for
23 refund of the special fuel tax paid under this section is allowed only
24 if all the following apply:

25 (a) Special fuel tax was paid by the distributor on the nondyed
26 special fuel to which the claim relates and the claim is supported by
27 an invoice or invoices showing such payment;

28 (b) The special fuel distributor sold the special fuel to a holder
29 of a valid special authorization issued by the department;

30 (c) The claim contains the name and special authorization number of
31 each purchaser and the number of gallons sold to the purchaser;

32 (d) The claim contains a statement that the special fuel
33 distributor has not included the amount of the tax in the sale price of
34 the nondyed special fuel and has not collected the special fuel tax
35 from the purchaser; and

36 (e) The claim contains a statement that the special fuel covered by
37 the claim did not contain visible evidence of dye.

1 (3) Each claim for refund under this section must be made on a form
2 prescribed by the department and must be for a period of not less than
3 one week.

4 (4) The department may terminate the election of a special fuel
5 distributor if the special fuel distributor fails to comply with this
6 section.

7 (5) The department shall require a holder of a special
8 authorization to submit a request at least once every two years for
9 renewal of the special authorization upon forms supplied by the
10 department. The department shall prescribe the information to be
11 submitted by the special authorization holder and shall determine
12 whether the special authorization shall continue.

13 (6) For any special fuel purchased under this special
14 authorization, a special authorization holder shall retain records
15 required under RCW 82.38.190 for refund submittals for three years
16 following the purchase date of the fuel.

17 (7) Notwithstanding the special provisions provided under this
18 section, the special authorization holder is subject to all provisions
19 of this chapter that apply to refund claims.

20 (8) Purchases of special fuel made by interstate trucking companies
21 pursuant to this section are subject to the recordkeeping and reporting
22 provisions of the international fuel tax agreement.

23 NEW SECTION. **Sec. 74.** A licensee, other than a special fuel
24 exporter, is entitled to a refund of the special fuel tax previously
25 paid on special fuel which has been purchased from the licensee by a
26 person who is exempt from payment of the special fuel tax imposed by
27 this chapter. Application for the refund shall be accompanied by an
28 invoice or proof satisfactory to the department documenting each sale
29 wherein the purchaser was exempt from the special fuel tax. Claims for
30 refunds shall be made under this chapter.

31 **Sec. 75.** RCW 82.38.190 and 1997 c 183 s 10 are each amended to
32 read as follows:

33 (1) Claims under RCW 82.38.180 shall be filed with the department
34 on forms prescribed by the department and shall show the date of filing
35 and the period covered in the claim, the number of gallons of special
36 fuel used for purposes subject to tax refund, and such other facts and
37 information as may be required. Every such claim shall be supported by

1 an invoice or invoices issued to or by the claimant, as may be
2 prescribed by the department, and such other information as the
3 department may require. The requirement to provide invoices may be
4 waived for small refund amounts, as determined by the department.
5 Claims for refund of special fuel tax must be for at least twenty
6 dollars.

7 (2) Any amount determined to be refundable by the department under
8 RCW 82.38.180 shall first be credited on any amounts then due and
9 payable from ~~((the special fuel dealer or special fuel user or any))~~
10 a person to whom the refund is due, and the department shall then
11 certify the balance thereof to the state treasurer, who shall thereupon
12 draw his or her warrant for ~~((such))~~ the certified amount to ~~((such~~
13 ~~special fuel dealer or special fuel user or any))~~ the person.

14 (3) No refund or credit shall be approved by the department unless
15 a written claim for refund or credit stating the specific grounds upon
16 which the claim is founded is filed with the department:

17 (a) Within thirteen months from the date of purchase or from the
18 last day of the month following the close of the reporting period for
19 which the refundable amount or credit is due with respect to refunds or
20 credits allowable under RCW 82.38.180~~((, subsections))~~ (1), (2), (4),
21 and (5), and if not filed within this period the right to refund shall
22 be forever barred.

23 (b) Within ~~((three))~~ five years from the last day of the month
24 following the close of the reporting period for which the overpayment
25 is due with respect to the refunds or credits allowable under RCW
26 82.38.180(3). The department shall refund any amount paid that has
27 been verified by the department to be more than ten dollars over the
28 amount actually due for the reporting period. Payment credits shall
29 not be carried forward and applied to subsequent tax returns for a
30 person licensed under this chapter.

31 (4) Within thirty days after disallowing any claim in whole or in
32 part, the department shall serve written notice of its action on the
33 claimant.

34 (5) Interest shall be paid upon any refundable amount or credit due
35 under RCW 82.38.180(3) at the rate of one percent per month from the
36 last day of the calendar month following the reporting period for which
37 the refundable amount or credit is due.

38 The interest shall be paid:

1 (a) In the case of a refund, to the last day of the calendar month
2 following the date upon which the person making the overpayment, if he
3 or she has not already filed a claim, is notified by the department
4 that a claim may be filed or the date upon which the claim is approved
5 by the department, whichever date is earlier.

6 (b) In the case of a credit, to the same date as that to which
7 interest is computed on the tax or amount against which the credit is
8 applied.

9 If the department determines that any overpayment has been made
10 intentionally or by reason of carelessness, it shall not allow any
11 interest thereon.

12 (6) The department shall pay interest of one percent on any refund
13 payable under RCW 82.38.180 (1), (2), or (6) that is issued more than
14 thirty state business days after the receipt of a claim properly filed
15 and completed in accordance with this section. After the end of the
16 thirty business-day period, additional interest shall accrue at the
17 rate of one percent on the amount payable for each thirty calendar-day
18 period, until the refund is issued.

19 (7) No injunction or writ of mandate or other legal or equitable
20 process shall issue in any suit, action or proceeding in any court
21 against this state or against any officer of the state to prevent or
22 enjoin the collection under this chapter of any tax or any amount of
23 tax required to be collected.

24 **Sec. 76.** RCW 82.38.210 and 1979 c 40 s 15 are each amended to read
25 as follows:

26 If any (~~special fuel dealer, supplier, or user~~) licensee liable
27 for the remittance of tax imposed by this chapter fails to pay the
28 same, the amount thereof, including any interest, penalty, or addition
29 to such tax, together with any costs that may accrue in addition
30 thereto, shall be a lien in favor of the state upon all franchises,
31 property, and rights to property, whether real or personal, then
32 belonging to or thereafter acquired by such person, whether such
33 property is employed by such person for personal or business use or is
34 in the hands of a trustee, or receiver, or assignee for the benefit of
35 creditors, from the date the taxes were due and payable, until the
36 amount of the lien is paid or the property sold in payment thereof.
37 The lien shall have priority over any lien or encumbrance whatsoever,
38 except the lien of other state taxes having priority by law, and except

1 that such lien shall not be valid as against any bona fide mortgagee,
2 pledgee, judgment creditor, or purchaser whose rights have attached
3 prior to the time the department has filed and recorded notice of such
4 lien as hereinafter provided.

5 In order to avail itself of the lien hereby created, the department
6 shall file with any county auditor a statement of claim and lien
7 specifying the amount of delinquent taxes, penalties and interest
8 claimed by the department. From the time of filing for record, the
9 amount required to be paid shall constitute a lien upon all franchises,
10 property and rights to property, whether real or personal, then
11 belonging to or thereafter acquired by such person in the county. Any
12 lien as provided in this section may also be filed in the office of the
13 secretary of state. Filing in the office of the secretary of state
14 shall be of no effect, however, until the lien or copy thereof shall
15 have been filed with the county auditor in the county where the
16 property is located. When a lien is filed in compliance herewith and
17 with the secretary of state, such filing shall have the same effect as
18 if the lien had been duly filed for record in the office of the auditor
19 in each county of this state.

20 **Sec. 77.** RCW 82.38.220 and 1994 c 262 s 26 are each amended to
21 read as follows:

22 In the event any (~~special fuel user or special fuel dealer~~)
23 licensee is delinquent in the payment of any obligation imposed under
24 this chapter, the department may give notice of the amount of such
25 delinquency by registered or certified mail to all persons having in
26 their possession or under their control any credits or other personal
27 property belonging to (~~such user or dealer~~) the licensee or owing any
28 debts to (~~such user or dealer~~) the licensee, at the time of the
29 receipt by them of such notice. Any person so notified shall neither
30 transfer nor make other disposition of such credits, personal property,
31 or debts until the department consents to a transfer or other
32 disposition. All persons so notified must, within twenty days after
33 receipt of the notice, advise the department of any and all such
34 credits, personal property, or debts in their possession, under their
35 control or owing by them, as the case may be, and shall immediately
36 deliver such credits, personal property, or debts to the department or
37 its duly authorized representative to be applied to the indebtedness
38 involved.

1 Upon service, the notice and order to withhold and deliver
2 constitutes a continuing lien on property of the taxpayer. The
3 department shall include in the caption of the notice to withhold and
4 deliver "continuing lien." The effective date of a notice to withhold
5 and deliver served under this section is the date of service of the
6 notice.

7 If a person fails to answer the notice within the time prescribed
8 by this section, it is lawful for the court, upon application of the
9 department and after the time to answer the notice has expired, to
10 render judgment by default against the party named in the notice to
11 withhold and deliver for the full amount claimed by the department in
12 the notice to withhold and deliver, together with costs.

13 **Sec. 78.** RCW 82.38.230 and 1979 c 40 s 17 are each amended to read
14 as follows:

15 Whenever any (~~special fuel user, supplier or dealer~~) licensee is
16 delinquent in the payment of any obligation imposed hereunder, and such
17 delinquency continues after notice and demand for payment by the
18 department, the department shall proceed to collect the amount due from
19 the (~~user, supplier or dealer~~) licensee in the following manner: The
20 department shall seize any property subject to the lien of said excise
21 tax, penalty, and interest and thereafter sell it at public auction to
22 pay said obligation and any and all costs that may have been incurred
23 on account of the seizure and sale. Notice of such intended sale and
24 the time and place thereof shall be given to such delinquent (~~user,~~
25 ~~supplier or dealer~~) licensee and to all persons appearing of record to
26 have an interest in such property. The notice shall be given in
27 writing at least ten days before the date set for the sale by enclosing
28 it in an envelope addressed to (~~such user, supplier or dealer~~) the
29 licensee at (~~his~~) the licensee's address as the same appears in the
30 records of the department and, in the case of any person appearing of
31 record to have an interest in such property, addressed to such person
32 at his or her last known residence or place of business, and depositing
33 such envelope in the United States mail, postage prepaid. In addition,
34 the notice shall be published for at least ten days before the date set
35 for the sale in a newspaper of general circulation published in the
36 county in which the property seized is to be sold. If there is no
37 newspaper of general circulation in such county, the notice shall be
38 posted in three public places in the county for a period of ten days.

1 The notice shall contain a description of the property to be sold,
2 together with a statement of the amount due (~~hereunder~~) under this
3 chapter, the name of the (~~user, supplier or dealer~~) licensee and the
4 further statement that unless such amount is paid on or before the time
5 fixed in the notice the property will be sold in accordance with law.

6 The department shall then proceed to sell the property in
7 accordance with the law and the notice, and shall deliver to the
8 purchaser a bill of sale or deed which shall vest title in the
9 purchaser. If upon any such sale the moneys received exceed the amount
10 due to the state (~~hereunder~~) under this chapter from the delinquent
11 (~~user, supplier or dealer~~) licensee, the excess shall be returned to
12 (~~such user, supplier or dealer~~) the licensee and (~~his~~) the
13 licensee's receipt obtained (~~therefor~~) for the excess. If any person
14 having an interest in or lien upon the property has filed with the
15 department prior to such sale, notice of such interest or lien, the
16 department shall withhold payment of any such excess to (~~such user,~~
17 ~~supplier or dealer~~) the licensee pending a determination of the rights
18 of the respective parties thereto by a court of competent jurisdiction.
19 If for any reason the receipt of (~~such user, supplier or dealer shall~~
20 ~~not be~~) the licensee is not available, the department shall deposit
21 such excess with the state treasurer as trustee for (~~such user,~~
22 ~~supplier or dealer, his~~) the licensee or the licensee's heirs,
23 successors, or assigns: PROVIDED, That prior to making any seizure of
24 property as (~~herein~~) provided for in this section, the department may
25 first serve upon the (~~user's, supplier's, or dealer's~~) licensee's
26 bondsman a notice of the delinquency, with a demand for the payment of
27 the amount due.

28 **Sec. 79.** RCW 82.38.235 and 1979 c 40 s 22 are each amended to read
29 as follows:

30 Whenever any assessment shall have become final in accordance with
31 the provisions of this chapter, the department may file with the clerk
32 of any county within the state a warrant in the amount of the
33 assessment of taxes, penalties plus interest and a filing fee of five
34 dollars. The clerk of the county wherein the warrant is filed shall
35 immediately designate a superior court cause number for such warrant,
36 and the clerk shall cause to be entered in the judgment docket under
37 the superior court cause number assigned to the warrant, the name of
38 the (~~special fuel user, supplier or dealer~~) licensee mentioned in the

1 warrant, the amount of the tax, penalties, interest and filing fee and
2 the date when such warrant was filed. The aggregate amount of such
3 warrant as docketed shall become a lien upon the title to, and interest
4 in all real and personal property of named person against whom the
5 warrant is issued, the same as a judgment in a civil case duly docketed
6 in the office of such clerk. Such warrant so docketed shall be
7 sufficient to support the issuance of writs of execution and writs of
8 garnishment in favor of the state in the manner provided by law in the
9 case of civil judgment, wholly or partially unsatisfied. The clerk of
10 the court shall be entitled to a filing fee of five dollars, which
11 shall be added to the amount of the warrant.

12 **Sec. 80.** RCW 82.38.240 and 1971 ex.s. c 175 s 25 are each amended
13 to read as follows:

14 Whenever any (~~special fuel user or special fuel dealer~~) licensee
15 is delinquent in the payment of any obligation hereunder the department
16 may transmit notice of such delinquency to the attorney general who
17 shall at once proceed to collect by appropriate legal action the amount
18 due the state from (~~such user or dealer~~) the licensee. In any suit
19 brought to enforce the rights of the state hereunder, a certificate by
20 the department showing the delinquency shall be prima facie evidence of
21 the amount of the obligation, of the delinquency thereof and of
22 compliance by the department with all provisions of this chapter
23 relating to such obligation.

24 **Sec. 81.** RCW 82.38.260 and 1995 c 274 s 25 are each amended to
25 read as follows:

26 The department shall enforce the provisions of this chapter, and
27 may prescribe, adopt, and enforce reasonable rules and regulations
28 relating to the administration and enforcement thereof. The Washington
29 state patrol and its officers shall aid the department in the
30 enforcement of this chapter, and, for this purpose, are declared to be
31 peace officers, and given police power and authority throughout the
32 state to arrest on sight any person known to have committed a violation
33 of the provisions of this chapter.

34 The department or its authorized representative is hereby empowered
35 to examine the books, papers, records and equipment of any (~~special
36 fuel dealer, special fuel user,~~) licensee or any person dealing in,
37 transporting, or storing special fuel as defined in this chapter and to

1 investigate the character of the disposition which any person makes of
2 such special fuel in order to ascertain and determine whether all taxes
3 due hereunder are being properly reported and paid. The fact that such
4 books, papers, records and equipment are not maintained in this state
5 at the time of demand shall not cause the department to lose any right
6 of such examination under this chapter when and where such records
7 become available.

8 The department or its authorized representative is further
9 empowered to investigate the disposition of special fuel by any person
10 where the department has reason to believe that untaxed special fuel
11 has been diverted to a use subject to the taxes imposed by this chapter
12 without said taxes being paid in accordance with the requirements of
13 this chapter.

14 For the purpose of enforcing the provisions of this chapter it
15 shall be presumed that all special fuel delivered to service stations
16 as well as all special fuel otherwise received (~~((by a special fuel
17 dealer or a special fuel user))~~) into storage and dispensing equipment
18 designed to fuel motor vehicles is delivered (~~((by the special fuel
19 dealer or special fuel user))~~) into the fuel supply tanks of motor
20 vehicles and consumed in the propulsion of motor vehicles on the
21 highways of this state, unless the contrary is established by
22 satisfactory evidence.

23 The department shall, upon request from the officials to whom are
24 entrusted the enforcement of the special fuel tax law of any other
25 state, the District of Columbia, the United States, its territories and
26 possessions, the provinces or the Dominion of Canada, forward to such
27 officials any information which he or she may have relative to the
28 receipt, storage, delivery, sale, use, or other disposition of special
29 fuel by any (~~((special fuel dealer or special fuel user, provided such))~~)
30 licensee if the other state or states furnish like information to this
31 state.

32 Returns required by this chapter, exclusive of schedules, itemized
33 statements and other supporting evidence annexed thereto, shall at all
34 reasonable times be open to the public.

35 NEW SECTION. **Sec. 82.** It is intended that the ultimate liability
36 for the tax imposed under this chapter be upon the user, regardless of
37 the manner in which collection of the tax is provided for in this
38 chapter. However, this section does not apply to agreements between

1 the department and federally recognized Indian tribes entered into
2 under RCW 82.38.310, nor does it apply to the consent decrees entered
3 in *Confederated Tribes of the Colville Reservation v. Washington*
4 *Department of Licensing*, No. CS-92-248-JLQ (E.D. Wash.) and *Teo v.*
5 *Steffenson*, No. CY-93-3050-AAM (E.D. Wash.).

6 NEW SECTION. **Sec. 83.** A special fuel distributor who incurs
7 liability in December 1998 for the special fuel tax imposed under this
8 chapter shall report the liability and pay the tax in January 1999 in
9 the manner required by this chapter as it existed before January 1,
10 1999.

11 A special fuel distributor or special fuel user shall inventory all
12 special fuel, including dyed special fuel, that is on hand or in the
13 person's possession as of 12:01 a.m. on January 1, 1999, and is not in
14 the bulk transfer-terminal system and shall report the results of the
15 inventory to the department no later than the last business day of
16 February 1999. The report of inventory must be made on a form
17 prescribed by the department.

18 A special fuel distributor may pay the tax due on special fuel in
19 inventory any time before February 28, 2000, but at least one-twelfth
20 of the amount due must be paid by the last day of each month starting
21 with February 1999. Payments not received in accordance with this
22 section are late and are subject to the interest and penalty provisions
23 of this chapter. Payments made after February 2000 are late and are
24 subject to the interest and penalty provisions of this chapter.

25 A special fuel user shall pay the tax due on fuel in inventory in
26 accordance with the filing frequency assigned to the user before the
27 effective date of this section. Payments not received in accordance
28 with the filing frequency are late and are subject to the interest and
29 penalty provisions of this chapter.

30 NEW SECTION. **Sec. 84.** (1) An international fuel tax agreement
31 licensee who meets the qualifications in subsection (2) of this section
32 may be given special authorization by the department to purchase
33 special fuel delivered into bulk storage without payment of the special
34 fuel tax at the time the fuel is purchased. The special authorization
35 applies only to full truck-trailer loads filled at a terminal rack and
36 delivered directly to the bulk storage facilities of the special
37 authorization holder. The licensee shall pay special fuel tax on the

1 fuel at the time the licensee files their international fuel tax
2 agreement tax return and accompanying schedule with the department.
3 The accompanying schedule shall be provided in a form and manner
4 determined by the department and shall contain information on purchases
5 and usage of all nondyed special fuel purchased during the reporting
6 period. In addition, by the fifteenth day of the month following the
7 month in which fuel under the special authorization was purchased, the
8 licensee must report to the department, the name of the seller and the
9 number of gallons purchased for each purchase of such fuel, and any
10 other information as the department may require.

11 (2) To receive or maintain special authorization under subsection
12 (1) of this section, the following conditions regarding the
13 international fuel tax agreement licensee must apply:

14 (a) During the period encompassing the four consecutive calendar
15 quarters immediately preceding the fourth calendar quarter of the
16 previous year, the number of gallons consumed outside the state of
17 Washington as reported on the licensee's international fuel tax
18 agreement tax returns must have been equal to at least twenty percent
19 of the nondyed special fuel gallons, including fuel used on-road and
20 off-road, purchased by the licensee in the state of Washington, as
21 reported on the accompanying schedules required under subsection (1) of
22 this section;

23 (b) The licensee must have been licensed under the provisions of
24 the international fuel tax agreement during each of the four
25 consecutive calendar quarters immediately preceding the fourth calendar
26 quarter of the previous year; and

27 (c) The licensee has not violated the reporting requirements of
28 this section.

29 (3) A special fuel distributor who sells special fuel under the
30 special authorization provisions of this section is not liable for the
31 special fuel tax on the fuel. By the fifteenth day of the month
32 following the month in which the fuel was sold, the special fuel
33 distributor shall report to the department, the name and special
34 authorization number of the purchaser and the number of gallons sold
35 for each purchase of such special fuel, and any other information as
36 the department may require. The special fuel supplier will report such
37 sales, in a manner prescribed by the department, at the time the
38 special fuel supplier submits the monthly tax report.

1 (4) A supplier selling special fuel under the provisions of this
2 section shall not be responsible for taxes due for special fuel
3 purchased under the provisions of this section.

4 (5) An international fuel tax agreement licensee who qualifies for
5 a special authorization under this section for calendar year 1999 is
6 not subject to the special fuel user requirements of section 83 of this
7 act.

8 **Sec. 85.** RCW 43.05.110 and 1995 c 403 s 612 are each amended to
9 read as follows:

10 The department of agriculture, fish and wildlife, health,
11 licensing, or natural resources may issue a civil penalty provided for
12 by law without first issuing a notice of correction if: (1) The person
13 has previously been subject to an enforcement action for the same or
14 similar type of violation of the same statute or rule or has been given
15 previous notice of the same or similar type of violation of the same
16 statute or rule; or (2) compliance is not achieved by the date
17 established by the department in a previously issued notice of
18 correction, if the department has responded to any request for review
19 of such date by reaffirming the original date or establishing a new
20 date; (3) the violation has a probability of placing a person in danger
21 of death or bodily harm, has a probability of causing more than minor
22 environmental harm, or has a probability of causing physical damage to
23 the property of another in an amount exceeding one thousand dollars; or
24 (4) the violation was committed by a business that employed fifty or
25 more employees on at least one day in each of the preceding twelve
26 months. In addition, the department of fish and wildlife may issue a
27 civil penalty provided for by law without first issuing a notice of
28 correction for a violation of any rule dealing with seasons, catch or
29 bag limits, gear types, or geographical areas for fish or wildlife
30 removal, reporting, or disposal.

31 This section does not apply to the civil penalties imposed under
32 RCW 82.38.170(13).

33 **Sec. 86.** RCW 82.47.010 and 1991 c 173 s 2 are each amended to read
34 as follows:

35 The definitions set forth in this section shall apply throughout
36 this chapter unless the context clearly requires otherwise.

1 (1) "Motor vehicle fuel" has the meaning given in RCW
2 82.36.010(~~((+2))~~).

3 (2) "Special fuel" has the meaning given in RCW 82.38.020(~~((+5))~~).

4 (3) "Motor vehicle" has the meaning given in RCW 82.36.010(~~((+1))~~).

5 **Sec. 87.** RCW 82.80.010 and 1991 c 339 s 12 are each amended to
6 read as follows:

7 (1) Subject to the conditions of this section, any county may levy,
8 by approval of its legislative body and a majority of the registered
9 voters of the county voting on the proposition at a general or special
10 election, additional excise taxes equal to ten percent of the state-
11 wide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of
12 motor vehicle fuel as defined in RCW 82.36.010(~~((+2))~~) and on each
13 gallon of special fuel as defined in RCW 82.38.020(~~((+5))~~) sold within
14 the boundaries of the county. Vehicles paying an annual license fee
15 under RCW 82.38.075 are exempt from the county fuel excise tax. An
16 election held under this section must be held not more than twelve
17 months before the date on which the proposed tax is to be levied. The
18 ballot setting forth the proposition shall state the tax rate that is
19 proposed. The county's authority to levy additional excise taxes under
20 this section includes the incorporated and unincorporated areas of the
21 county. The additional excise taxes are subject to the same exceptions
22 and rights of refund as applicable to other motor vehicle fuel and
23 special fuel excise taxes levied under chapters 82.36 and 82.38 RCW.
24 The proposed tax shall not be levied less than one month from the date
25 the election results are certified by the county election officer. The
26 commencement date for the levy of any tax under this section shall be
27 the first day of January, April, July, or October.

28 (2) Every person subject to the tax shall pay, in addition to any
29 other taxes provided by law, an additional excise tax to the director
30 of licensing at the rate levied by a county exercising its authority
31 under this section.

32 (3) The state treasurer shall distribute monthly to the levying
33 county and cities contained therein the proceeds of the additional
34 excise taxes collected under this section, after the deductions for
35 payments and expenditures as provided in RCW 46.68.090 (1) and (2) and
36 under the conditions and limitations provided in RCW 82.80.080.

1 (4) The proceeds of the additional excise taxes levied under this
2 section shall be used strictly for transportation purposes in
3 accordance with RCW 82.80.070.

4 (5) The department of licensing shall administer and collect the
5 county fuel taxes. The department shall deduct a percentage amount, as
6 provided by contract, for administrative, collection, refund, and audit
7 expenses incurred. The remaining proceeds shall be remitted to the
8 custody of the state treasurer for monthly distribution under RCW
9 82.80.080.

10 NEW SECTION. **Sec. 88.** The department of licensing shall adopt
11 rules necessary to implement this act and shall seek the assistance of
12 the fuel tax advisory committee in developing and adopting the rules.

13 NEW SECTION. **Sec. 89.** The department of licensing may enter into
14 a fuel tax cooperative agreement with another state or Canadian
15 province for the administration, collection, and enforcement of each
16 state's or Canadian province's fuel taxes.

17 NEW SECTION. **Sec. 90.** The following acts or parts of acts are
18 each repealed:

19 (1) RCW 82.36.030 and 1996 c 104 s 1, 1994 c 262 s 18, 1993 c 54 s
20 2, 1991 c 339 s 14, 1990 c 42 s 202, 1987 c 174 s 2, & 1961 c 15 s
21 82.36.030;

22 (2) RCW 82.36.038 and 1987 c 174 s 3;

23 (3) RCW 82.36.220 and 1963 ex.s. c 22 s 20, 1961 ex.s. c 21 s 31,
24 & 1961 c 15 s 82.36.220;

25 (4) RCW 82.38.040 and 1990 c 250 s 81, 1973 1st ex.s. c 156 s 2, &
26 1971 ex.s. c 175 s 5;

27 (5) RCW 82.38.082 and 1987 c 294 s 1; and

28 (6) RCW 82.38.086 and 1981 c 342 s 6.

29 NEW SECTION. **Sec. 91.** (1) Sections 8 through 12, 14, 15, 29, 35,
30 43, and 47 through 49 of this act are each added to chapter 82.36 RCW.

31 (2) Sections 52 through 57, 59, 69, 72, 73, 74, 82 through 84, and
32 89 of this act are each added to chapter 82.38 RCW.

33 NEW SECTION. **Sec. 92.** This act takes effect January 1, 1999."

1 **SHB 2659** - S COMM AMD
2 By Committee on Transportation

3

4 On page 1, line 1 of the title, after "taxes;" strike the remainder
5 of the title and insert "amending RCW 35A.82.010, 82.04.4285,
6 82.36.020, 82.36.032, 82.36.045, 82.36.047, 82.36.060, 82.36.070,
7 82.36.080, 82.36.090, 82.36.100, 82.36.120, 82.36.130, 82.36.140,
8 82.36.150, 82.36.160, 82.36.170, 82.36.180, 82.36.190, 82.36.200,
9 82.36.210, 82.36.230, 82.36.280, 82.36.300, 82.36.310, 82.36.330,
10 82.36.335, 82.36.350, 82.36.370, 82.36.375, 82.36.390, 82.36.400,
11 82.38.020, 82.38.030, 82.38.070, 82.38.080, 82.38.090, 82.38.100,
12 82.38.110, 82.38.120, 82.38.130, 82.38.150, 82.38.160, 82.38.170,
13 82.38.180, 82.38.190, 82.38.210, 82.38.220, 82.38.230, 82.38.235,
14 82.38.240, 82.38.260, 43.05.110, 82.47.010, and 82.80.010; reenacting
15 and amending RCW 82.08.0255, 82.12.0256, 82.36.010, and 82.38.140;
16 adding new sections to chapter 82.36 RCW; adding new sections to
17 chapter 82.38 RCW; creating new sections; repealing RCW 82.36.030,
18 82.36.038, 82.36.220, 82.38.040, 82.38.082, and 82.38.086; prescribing
19 penalties; and providing an effective date."

--- END ---